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H – 186

International Court of Justice

H0186-0002

595

OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING, ET AL., SITTING AT NURNBERG, GERMANY ON 23 July 1946, 1000-1700, LORD JUSTICE LAWRENCE PRESIDING.

DR. KUBUSCHOK: Yesterday I had stopped at the point where I was describing what Papen did in the course of the measures of 30 June. I mentioned his resignation. I shall continue on Page 46, the last paragraph.

As to the positive one, he strives to bring about the intervention of the Wehrmacht. He turns to his friend Colonel General von Fritsch Bolmberg, but owing to his attitude, it is out of the question. Fritsch will not act without a formal order from the Reich Prseidnet. So now Papen endeavours to get in touch with Hindenburg. But Hindenburg's entourage keep him off.

All access to his estate Neudeck are closed by SS guards. Papen sends his secretary Ketteler to Hindeburg's neighbour, but also that attempt fails. He has to witness how oblviously Hindenburg has been influences, when he publicly approves of Hitler's conduct on the 30th of June in an official telegram.

So what was Papen to do now, which would promise even moderate success?

In his negotiations with Hitler he tried to keep things on a legal plane. The attempts to mobilize the only factor of power, the Wehrmacht, had faled. Hindenburg cannot be reached: he is evidently influenced by his advesors in the opposite direction.

The prosecution is of the opinion that this was just the time when Papen should have openly pointed ou the criminal events on June 30; he could possible have effected thereby the collapse of the entire Nazi system. That assertion is untenable. Apart from the fact that Papen, as shown, had no longer the opportunity for such an official statement, subsequent developments in German demonstrated that such an individual protest would not have had any effect against the powerful

H0186 - 0003

position of Hitler either within the country or abroad. Hitler's prestige in Germany was already then so great, and more so later on, that such a protest, even if it could have reached the public at all, would surely not have found any echo in the masses of the population. To be sure, the great masses saw only the economic improvement and the strengthening of Germany's position abroad, and only a numerically thin layer realized the true danger of the development. Most foreign countries knew about the events on June 30 more than the German people. A statement by Papen to the people would not have thrown much light on it. No conclusions were drawn from the available information by foreign cuntries either at that time or later.

The Prosecution is even of the opinion that such a step might have led to the reoccupation of the Rhineland by the French. I am unable to discover where the Prosecution has found a basis for such an assertion. It is contradicted by the fact that no military reaction of any kind followed after the events which occurred later and which do not belong in the realm of internal politics, bit vitally touched the world abroad - as, for instance, the introduction of compulsory military service and the occupation of the Rhineland.

By his resignation and ostensible non-participation in the sessions of the Cabinet and of the Reichstag, Papen showed the public that he was hostile to the development. His conduct was a public protest against the measures of June 30 and against their perpetration. The Prosecution can not overlook these apparent signs which are historical facts. It attempts therefore, to construct an anti-thesis between his conduct and his mental attitude. The only assistance at their disposal to that end are the letters addressed by Papen in July to Hiter. Even if the spirit and purpose of these letters were not clearly discernable from their cotents, as in fact is the case, such an attempt would also fail in the face of the facts which were just stated, because of the inadequate means at hand.

Generally, I would like to state in this regard the following:

On what ground should Papen have taken an inimical attitude towards Hitler during his Vice-Chancellorship and during the events of June 30, while being in fact a loyal follower of his?

H0186 - 0004

On what ground should Hitler have [illegible] it himself who, according to the Prosecution, conspired with Papren - and this, after all, would only be a result of the conspiracy? Could it not be in the interests of Hitler, that Papen disclosed in his Marburg speech all the weaknesses and misdeeds of the Nazi system? On what ground should Hitler have wished that Papen so obviously distanced himself from the lawless actions on June 3o?

If we consider that, only one conclusion can be arried at: What the Prosecution believes to be able to interpret as the mental attitude of Papen, lacks all logic.

This thesis of an unconditional obedience to Hitler, despite certain contrary facts intended to serve as camouflage, is used again by the Prosecution with respect to Papen's acceptance of the position in Vienna.

Before discussing this comple[illegible]problem, let me briefly state the following:

In my opinion, the final development of the Austrian question, which occured after Papen's recall and undoubtedly without his cooperation, namely the marching in on 12 March 1938, does also not represent a crime in the sense of the Charter. The Charter considers as punishable the preparation and the waging of a war of aggression or of a war in violation of international treaties.

In the three counts of the indictment, it has merely confined itself to the arraignment of what appears as a most serious crime with its terrible further consequences: The aggressive and prohibited war the crimes against the rules of warfare, and the crimes against humanity in their most violent form, the immeasurable consequences of these grave actions, have all justified this unusual trial. The Charter does not charge the Tribunal with the punishment of all the injustices which has occurred during the course of the development of National Socialism. Such a task ould not be fulfilled within the framework of this Tribunal, for technical reasons and for lack of time. It is not the task of the Tribunal to examine whether international treaties were observed or not. This question is only of importance if wars were casued or if the crimes of violence which are to be described in detail

H0186 - 0005

have to be accounted for. The march into Austria is no war, however far one stretches the conception from the standpoint of international law. In this case it is a decisive fact that no force was employed, and not even the slightest resistance was offered, that on the contrary, the troops were received with jubilation. Furthermore, the march into Austria cannot be considered in connection with the later acts of aggression. It was a special case based on the special situation which, since 1918, had already found expression in the efforts both on the Austrian and on the German side to bring about a union of the hardly prosperous Austrian state with Germany in some kind of constitutional form.

Therefore, the actual events must be detached from Hitler's war plans or purely military plans of preparation - with which I shall deal later - and must be regarded

H0186 - 0006

as the solution of a political problem of the country which had become acute and the result of which had always been the desire of both sides, independent of Hitler.

Papen's activity in Vienna is clearly characterized by three episodes: the circumstances of his appointment on 26 July 1934: his letter to Hitler dated 16 July 1936 (Defense doc. No. 71) after the conclusion of the July agreement: and his recall on 4 February 1938.

The following circumstances lay at the origin of his appointment:

A crucial event had occurred. Dollfuss is murdered; not only are the relations between Germany and Austria strained, but they have reached an extremely dangerous stage of development. The international situation is menacing. Italy is marching upon the Brenner. An ultimate divergence of Austria towards one of the groups of powers interested is directly to be feared. Thus, there is the threat of a final situation which would definitely render impossible the maintenance of even merely supportable relations between Germany and Austria.

In this difficult situation, Hitler obviously thinks it necessary to dismiss his objections against the personality of Papen and entrust him with the mission in Vienna. Papen was particularly fitted for the initiation of a policy designed to overcome the deadlock resulting from the assassination of Dollfuss. Papen had always spoken in the Cabinet in favor of a friendly development of relations in the question concerning Austria. Papen was internationally known as a man for a reasonable policy of mutual understanding.

Papen naturally was extremely hesitating as to the taking over of this post. His experiences in the domestic sector of the last period, his personal attitude to the treatment of himself and of his collaborators on the 30th of June, his attitude to the assassination of Dollfuss, with whom he had been on most friendly terms since the time of his previous activity, were opposed to the taking over of the post. This resolution therefore was, for Papen, a very grave one. The perception, however, that he himself would alone be in the position to fulfil this task within the framework of true pacification must outweigh everything. Could he assume that anybody else had the strong will and also the possibility of assuring the maintenance of the road of appeasement? He could never expect a personality of the Foreign Office, and still less a member of the Party, to have such a personal independence as he himself enjoyed.

H0186 - 0007

From his post as Vice-Chancellor Papen brought his experience. He knew the difficulties to convince Hitler by pertinent arguments in a corresponding form. He alone could hope to carry through his efforts for a peaceful policy, notwithstanding the extremist tendencies of Hitler's advisers. His experiences, on the other hand, had made him very careful. He made his conditions and demanded the establishment of a clear policy based on facts. He demanded the withdrawal of influence over the Austrian Nazi-movement, which must be assured by the dismissal of the man who directly or indirectly had participated in the criminal act: The Landesinspector Habicht. He requested his own subordination to Hitler in order to make possible the maintaining of the conditions which he had proposed, and in order to avoid any alterations in the course of its handling. He compels something seemingly impossible in contact with a head of the State; he has the conditions laid down in writing under which he takes over his post as Ambassador. They are signed by Hitler. He wishes always to be in a position to force Hitler to keep to his written word.

We have a clear picture of these occurrences by the testimonies, particularly by the statement of the witness von Tschirschky, a man who, according to the declarations of the Prosecution, is really not suspected of viewing these things in the defendant's favor.

The Prosecution asserts that Papen, out of sheer opportunism as a faithful follower of Hitler's already known plans of aggression, had eagerly and willingly declared himself prepared to take over the new post.

Notwithstanding this, can this form of appointment, this extreme precaution of the defendant, be really in agreement with such an attitude? These secret conferences, this unpublished document signed by Hitler and in Papen's possession, cannot really be considered apretence in order to deceive -- as would be the consequence of the Prosecution's charge. These things were not intended to be publicized and were never made public.

The circumstances at the taking over of the Vienna post could only lead to the conclusion that Papen honestly strove to maintain the established appeasement policy. It likewise is impossible to talk here of opportunism. Papen had declined the position of Ambassador to the Vatican. This position of an Ambassador in Vienna was hardly an enticing post of honor for a former Reich Chancellor and recent Vice-Chancellor.

H0186-0008

Papen's own good economic situation excluded all along any material motives. Papen's letter of 16 July 1936 to Hitler is the report of the success of his two years' efforts to bring about settled peaceful relations between both the countries. The treaty of 11 July 1936 put the seal upon this.

This document, the evidential value of which is without a shadow of doubt, clearly explains the task allotted to Papen and its performance. Papen points out that the aim was reached, for the execution of which he was called to Vienna on 26 July 1934. He considered his task as accomplished with the conclusion of the Treaty.

No clearer evidence can be produced of the exactness of Papen's statement on his task and its performance than by this letter. Why did they believe they must impute a dubious interpretation to his mission? As an obliging instrument of Hitler's plans of aggression he has undertaken the task to prepare and carry out a forcible annexation of Austria. He has been charged with undermining the Schuschnigg Government and cooperating with Austria's illegal Nazi movement to this effect. All he did with a view to pacifying the mutual relations has been camouflage, in order to enable him to carry out his underground plans. And here the trustworthy statement of account is mandatory.

Is this also to be a camouflage, and give a presentation which stands in absolute contradiction to the facts -- this letter, found by the Allied troops in the secret records of the Reich Chancellory, and now thankfully placed at the disposal of the Defense Counsel by the Prosecution?

The third point that clearly characterizes Papen's activity in Vienna is his recall on 4 February 1938. The numerous recalls and nominations of that day clearly showed a reorganization of the most important military and political posts. The personalities of the recalled military and diplomats clearly show that the sole reason was for the unusual and extensive sudden change at that time. If Hitler then also recalled Papen from his post, without an actual reason for this, entirely unexpectedly and without giving a reason, it is thereby clearly proved that Hitler, at the beginning of a radical foreign political course, no longer saw in Papen the right man for Vienna.

These three points are suitable to confirm unequivocally and sufficiently the peaceful activity of Papen during the entire duration of his Austrian mission. As the Prosecution, however, also strives here to apply single events against

H0186 - 0009

Papen, I shall submit this period also to a short consideration.

We see Papen in a steady struggle with the illegal movement. The reproach that he had conspired with it is best led ad absurdum by the fact that Papen was selected as victim of an attack by these same illegal men, according to the plans of the illegal movement which have been confirmed by Foreign Minister Schmidt. The documentary evidence from the reports at hand which Papen sent to Hitler also has but one meaning. Here,too,there is a completely clear piece of evidence, since the reports to Hitler, which took place regularly in the course of business, actually excluded an intention to deceive the public. It is regrettable that all the reports could not be found in order to give, in their entirety, a clear, complete historical picture of Papen's activity. Only a fraction of the reports are in front of us . But when Papen had transferred abroad, at the end of his activity, the copies of all his reports, as the evidence has shown, then he could have done this only in order to have a historical justification for his policy of peace. It is proven by this in complete clearness that his policy reproduced in the complete report must have been a policy which was in contrast to the development which was brought about by the other side in March 1938.

All witnesses who have appeared in court, and who could make statements about the Austrian conditions, have stated under oath that Papen led a policy of pacification and fought against any meddling of the illegal movement in the political happenings. What can be concluded from the presentation of the Prosecution against that? That Papen had to maintain a certain outside connection to members of the Austrian Nazi movement corresponding to his position as German Ambassador and corresponding to the state treaty concluded with Austria --a connection which was in no way kept a secret, which was of an observing nature only, and which was necessary in order to fulfil the obligation to report to Berlin about the actual conditions in Austria? If he had actually worked together with the illegal movement in the way the Prosecution states, this would most certainly have been expressed in his reports to Berlin. He does not fabricate any secret plans with the law breakers.

H0186 - 0010

But we see him on the contrary in open negotiations with the Austrian government about the participation of the national opposition in the governmental work, which was agreed on in the July Treaty. And if we finally have before us the deposition of the history of the illegal movement in the report of Rainer (PS-812), we see their activity in those years takes place without the slightest cooperation or support from Papen.

What can be concluded against the defendant from the fact that he was interested in the activity of the Austrian Liberty Organization (Freiheitsbund) ? If it is set forth that this Liberty Organization represents a non-N.a.i. trade-union, Austrian organization which was considered to be ready to go with Schuschnigg and to support this Cabinet.

What can be concluded against the defendant from the fact that he also observed the governmental conditions in Austria and reported to Berlin about them ? And when this wish is expressed at this occasion that this or that constellation is favorable for the development of friendly relations with Austria ?

During the cross-examination the Prosecution has presented reports of foreign agencies which Papen forwarded to Berlin. They believe that Papen had made the content of these reports his own. This supposition must be incorrect. The informational purpose of sending reports of the foreign secret service is clearly at hand. Beyond that the following has to be established here also. Papen especially forwarded to Berlin also those documents which had come into his hands and which contained a criticism of the German condition. The witness Gisevius and Lahousen have pointed out that Hitler was informed incorrectly or insufficiently by his closest coworkers. The critical reports of foreign countries which Papen had forwarded to Hitler in a direct way, could and also should fulfill the aim of drawing Hitler's attention to abuses and to make him abolish them. This is especially often the case concerning statements about the anticlerical conditions in Germany. The presentation of the reports in the case Tschirschky concerning the activity of the Gestapo which were especially mentioned in the cross-examination, are on the same line. The regular reports of Papen to Hitler deal partly also with the conditions in the neighboring states.

The checking of the contents of the reports shows that they deal entirely wit problems which are in direct connection with the foreign political situation of Austria in the Balkans and which therefore fall into the sphere of tasks of the ambassador accredited in Vienna.

Finally we have to go into the affidavits of Messersmith. He describes events after a period of 10 years, in the case of Papen, seeminaly in free memory. Time and later acquired information obviously seem to have clouded the picture of memory so completely that we see, for example, Papen's explanations about his tasks in the Southeastern area reproduced in the two affidavits with contents basically deviating fr m each other

My criticism can furthermore be satisfied with the statement that the contents of the affidavits are in contradiction to every rule of experience and logic. A diplomat cannot have revealed the secret aims of his politics to the representative of another state who meets him with emphasized reserve. It is impossible, as Messersmith says in another place, that Papen told not only him, but even publicly, his alleged plan to overthro Schuschnigg, with whose government Papen himself was accredited.
It is an impossibility that such disclosures are supposed to have had no consequences whatsoever, and that they have been put down in an affidavit for the first time in 1945.

The two affidavits can therefore be no basis for the finding of a judgment, besides the fact that their content is disproved by the other evidence which contained both the intentions and the actions of Papen.

Now I shall return to the questionnaire which was read yesterday, Document 106, A complete contradiction of the Messersmith affidavit is given in this questionnaires by the Polish Minister, Jan Gawronski. This testimony of the diplomat of a country with which Germany was at war from September 1939 on seems especially noteworthy.

Dr. Gawronski had an opportunity during the whole Vienna activity, from 1935 to 1938 to observe Papen. In the answer in the questionnaire, the year 1937 is given by mistake, not 1934 as is correct, as the beginning of the activity of Gawronski in Vienna.

H0186-0011

All charges made by Messersmith -- Papen's collaboration with the illegal Nazi movement and the assumption to overthrow Schuschnigg's regime, the policy of aggression in the Southeastern area, the dismemberment of Czechoslovakia and giving it to Poland or Hungary -- are disproved by the testimony of Gawronski.

In addition, I refer to the affidavit Rademacher von Unna, part of which was read yesterday. If Papen refused to enter into a secret agreement with an Austrian minister, and if he refused to take advantage of this comfortable and convenient opportunity, this shows clearly that he took part in no subversive activity.

I believe to have sufficiently discussed therewith the period in which Papen exercised his activity as Ambassador extraordinary in Vienna.

Beyond it the Prosecution has taken into consideration Papen's cooperation in the discussion at Berchtesgaden on 12 February.

The occurrence of the conference of Berchtesgaden was not the beginning stage of a new course, but the result of the development up to that time. Months before, Papen and Schuschnigg in conversations had already regarded a meeting in the near future between the two statesmen as desirable. The July Treaty had naturally left many points of difference undecided. The testimony of the witness Guido Schmidt showed us the situation clearly: an opposition party very powerful in numbers, though officially not allowed, but tolerated tacitly because of actual conditions, looked ideologically to a full extent toward its, at least ideological leader in Germany. There the leader of this Party was at the same time head of the state. Regarding foreign policy a separation of the parties in both countries was necessary. The inner ideological unity, however, necessarily had to lead to differences again and again. We see, accordingly, in the Asutrian government and understandable reserve and a constant concern to prevent a growth of the influence of this movementin administration and government. The treatment of the questions resulting from the July Treaty corresponded inpractice also to this state of interests. It was obvious that the Austrian side should make an effort to treat the stipulations of the Treaty in a restrictive way. It was only natural that the wish existed on the German side to exhaust the possibilities of the Treaty to the fullest extent.

H0186-0012

H0186-0013

Therefore, a direct contact with the responsible heads of both countries, who on the German side was at the same time the head of the Party, could only be regarded as a reasonable requirement..

The recall of Papen on thefourth of February threatened to break up this development. Perhaps with the approach of the more rigorous course which was expected, a meeting of that sort for the purpose of the eradication of existing difficulties would be postponed forever. Certainly, a different result could have been expected later on, in a tenser atmosphere, from the collaboration of a radical successor, than that hoped for by Schuschnigg and Papen.

It is therefore thoroughly understandable that even after his recall, Papen, during his farewell visit to Hitler on 5 February, when they came to speak of affairs, still accepted the mission to bring about the intended Conference and to accompany the Austrian delegation to Berchtesgaden for this purpose.

The Prosecution accuses Papen, that already at that time, the program of the subsequent talks had been determined.. Papen, contrary to shis, has testified in his interrogation, that he had only received the mission to arrange the discussion for the purpose of clearing up all points of difference on the basis of the July Treaty. The prosecution still lacks the proof for its claim to the contrary. From what has happened on 12 February, it cannot in any way be concluded because of Hitler's personality of Hitler, what he personally thought at the first mentioning of such a discussion on 5 Feburary and much less, of which of his plans he informed Papen. The evidence has shown that the points voiced by Hitler on 12 February are identical with those demands which the Austrian National-Socialists had raised immediately prior to the discussion and transmitted to Hitler in their own channels. From this it can be seen that the subject of conversation chosen by Hitler in the discussion of 12 February was at the very least substantiated and could not as yet have been on hand on 5 February. If the Austrian Nazis preceded Papen with their demands to Berchtesgaden, then the viewof the Prosecution is thereby refuted, that Papen had conspired with Hitler and the Austrian party.

H0186 - 0014

In this case he himself would probably have been the best liaison man between the wishes of the Party and Hitler. This is also emphasized through the testimony of the witnesses Seyss-Inquart and Rainer, who have stated clearly that they did not have report any contact with Papen during this time. Rainer also points out in his report, that Papen had been of the opinion that the fact of the prearranged discussion had remained secret before the Austrian party.

The Prosecution has used the claim for the incrimination of Papen, that at the reception of the Austrian delegation on the German-Austrian frontier he had called Schuschnigg's attention to the presence of generals. Whether this really corresponds to the facts was not proven by the presentation of evidence. The sole evidence which can be used in respect to this is the testimony of Schmidt. The latter could not longer exactly testify anymore, whether Papen had spoken of one General,

H0186-0015

namely Keitel, who, according to past experiences after taking over his new office constantly kept himself in the surroundings of Hitler, or of several Generals. Papen himself does not know anymore today, if and in what form he made such an exclamation to Schuschnigg at the time. He also does not know, if at the time he was aware at all of the presence of generals. It is very possible that it came to his knowledge at the overnight stay in Salzburg, where he had stayed at a different hotel from the Austrian delegation. In any case, however, the fact cannot be overlooked, that even if Papen had made thestatement claimed by the Prosecution, this statement was made prior to the visit. That, therefore, he did not participate in any attempt at intimidation toward the Austrian gentlemen which might have been aimed at a motive of surprise. His participation in the discussion has been cleared by the evidence. Hitler alone was in command, who, in a brutal manner surprising to those who knew him, tried to impress Schuschnigg. Technical details werenegotiated with Ribbentrop. Papen more or less participated as a spectator, which also bore the fact into account, that he did not occupy his official position anymore. According to the uniform testimonies of those participating, he only saw his task raised by circumstances to intervene soothingly.

One has to consider his position; he sees his intentions doomed to failure through the behavior of Hitler, which cannot be expected of any reasoning human being. He sees how a man who is quick-tempered by nature in his excitementlets all that go which is necessary for a reasonable discussion in the sphere of a conference of statesmen. He hears Hitler's threats, and has to consider him determined to let things go on an irreparable way at the abrupt failure of the negotiations. In the framework of this situation, therefore, the achievement of certain concessions -- Hitler acquiesced in the field of the Army Ministry and the economic demands- and the postponement achieved after a hard struggle of the final settlement for ratification by the Austrian government and the Federal President (Bundespraesident), was theoptional solution of the dangerous situation. Even though in this point Papen agreed with the Austrian statesmen who undoubtedly were willing while safeguarding only reasonably the interests of their State to affix their provisional signatures on account of the prevailing conditions, this does not justify the charge against Papen that

H0186 - 0016

he approved and intended the result from the outset.

Hitler's opinion on Papen's previous activity in Austria and his participation in the Conference at Berchtesgaden is best illustrated by the fact that no further office of any kind was assigned to him in Vienna. It is very unlikely that during the decisive developments to come, Hitler would have failed to assign tasks to a man who inwardly and effectively attended the Conference at Berchtesgaden. One would not have replaced him by new people from Berlin, and for the still more complicated situation one would not have dispensed with the services of the man who, by reason of his years of service, was most intimately familiar with conditions as a whole. One would certainly have availed oneself of his personal contacts with Austrian statesmen which qualified him, inpreference to others, to continue work on Hitler's plans. If the Prosecution's interpretation of Papen's efforts towards understanding during the discussion in Berchtesgaden as deceitful maneuvering were correct, there is little doubt but that Papen would have been permitted to continue working along that line, and after replacing his person one wouldnot have charged people to deal further with those things whose course was much more radical.

Papen's memorandum on his farewell visit to the Prime Minister is revealing. A man who in his own commentary to Berlin, passes on Schuschnigg's interpretation that to some extent he had acted under pressure in Berchtesgaden - under "noteworthy", is little likely to have been an active participant in the coercive negotiations.

The record of evidence proved that thereafter Papen no longer held any public office.

The new Charge d' Affaires, Freiherr von Stein, a pronounced National Socialist, took charge of the Embassy. He was assisted by Keppler, a close friend of Hitler. Papen, on theother hand, makes his farewell calls, and he takes up residence at Kitzbuehel, a winter-sport resort.

In themeantime things are getting more and more critical. The plebiscite which Schuschnigg announces results in a development which perhaps Hitler even had not intended on that scale. The visit of Seyss-Inquart and Rainer on 9 March to Papen was accidental; there were no deliberations of any kind, and no decisions were taken. For Papen even to express the view - which Rainer confirmed - that, considering the formulation of the

H0186 - 0017

questionnaire, no decent Austrian could be expected to say "No", but that he was bound to follow Schuschnigg's password, suffices to indicate the contract of Papen's position towards the views of the Austrian Nazis and the views which the people from Berlin subsequently brought out.

If, in conclusion, I may still refer to Papen's presence in Berlin on 11 March I must say that even in reviewing things in retrospect I can give no clear explanation for Hitler's desire to know Papen in Berlin. Reasons for it may have been manifold. Should Hitler already at that time have been determined to foresee a solution in that direction as it finally came about - after all, doubts in that respect may exist - the reason might have been that he did not dare leave in Vienna this man who espoused the policy of peace; he might perhaps have assumed that because of the extremity of the position in which they found themselves, Austrian Government officials might perhaps have turned to him and that with Papen's help propositions for a settlement might perhaps have come about.

I would remind you of a similar situation, prior to the beginning of the campaign against Poland when Hitler was fearful lest "some swine might still come along with a proposal for an understanding in the last minute." On the other hand it is also quite conceivable that it was suitable to have Papen in Berlin in the event of yielding on the part of the Austrian Government, in which case he might not have wanted to be deprived of Papen's advice because of his familiarity with conditions.

In the scope of the necessary consideration of the indictment, it is, however, unnecessary to attempt to actually understand Hitler's inner motives. Decisive, to be sure, is finally merely what Papen did during his presence in the Reich Chancellory.

Upon his arrival he expressed to Hitler the desire that through the postponement of the plebiscite, a lessening of tension would have to be brought about. His attitude concerning the further events was documented. Papen through his standpoint concerning the military preparations, respectively to the lifting of the order to march on. The shorthand notes of the telephone conversations which had been carried on by Goering have given us a plastic picture of the events in the Reich Chancellery. In connection with this testimony the result is that essentially he was the driving force

H0186 - 0018

and occasionally went even beyond Hitler's intentions. He emphasized that from the beginning he had been consistent in striving for a solution, he now did not need to reflect or be advised in order to come to a decision. Seherr-Thoss's affidavit renders Papen's attitude on the eve of the day in question. In an intimate circle he remarked that he had advised against marching in, that against his advice, Hitler, however, just then "had committed the madness ofissuing the order to march in."

Finally, we still have a clear picture of Papen's attitude concerning this in his conversation with the witness, Guido Schmidt, which took place years later.

Austria's annexation was for a long time then already an historical fact and was considered by most Germans a great political achievement. Papen, on the other hand, criticizes most severely the methods used by Hitler and acknowledges anew the fundamentals of legality and faithfulness to treaties which, seen from a broad view, was forsaken here to the detriment of Germany.

I come to the result that - independent of the question of law, as to whether the case of Austria is at all capable of discussion within the limitations outlined by the Charter - in completion of the defense of the defendant, contrary evidence has been produced that Papen neither brought about the entry into Austria himself nor prepared for it by a policy directed to this end; that his activity in Austria exclusively served the purpose which he assumed with his commission on 26 July 1934; a policy which served for the restoration of friendly relations between both countries, a legal aim which had not the slightest thing to do with a special or general policy of aggression.

I should like to point out the following aside from my manuscript. It is not in contradiction that Papen, as well as the overwhelming majority of Germans and Austrians hoped for, since 1918, for the aim of a normal development. The union of both peoples in some close, legal contacts. That in view of the existing limits of peace treaties there would be more difficulties to overcome was clear. But, could not Papen assume, with a clear conscience, that parties to the treaty did not refuse to recognize a wish of both peoples, a wish which was emphasized by the political and

H0186 - 0019

economic impossibilities of maintaining the status quo. Was it not a question here of realizing the determination of peoples, the great principles of the Twentieth Century? The many voices from abroad at that time; his talk with Ambassador Henderson which is mentioned in Papen's report of 1 June 1937, defense document No. 74; the attitude of neighboring countries, which is also shown from the reports, and finally, the experiences in the treatment of the repatriation question could lead him to hope that the solution might some day be found in international understanding.

The first condition for this was the initiation of a separate and independent Austrian Government. This could be based only on a really friendly relationship with Germany. Papen's task could therefore be the basis for the fulfillment of the national wishes publicly expressed in both states.

I shall now continue on my manuscript.

H0186 - 0020

The period following this is bot brought under discussion by the Prosecution. The defense, however, must go into even this as evidence in refutation. It is easy to find a proof in established facts from this time, that the assertions of the Prosectution from the earlier period must be incorrect. The Prosecution leaves Papen at the termination of his activity in Vienna and it gives no explanation for the reason to which Papen's current inactivity can be traced back. There is no cause, no event, which could have impelled the alleged conspirators to this conduct.

We come now to the period of the immediate preparations for war, and the outbreak of the war.

According to the assumption of the Prosecution, the former conspirator Papen at this time abandoned his previous course, in spite of the possibilities that were doubtless available. The Prosecution ought to have cleared up this transformation in some way, if one is not immediately to regard the interpretation of the actions in the earlier period as inconcusive in the sense of a criminal objective. Papen retired to the country after the incorporation of Austria, where he remained aloof from public life for over a year, until April 1939. This fact is important if one considers the situation at that time. The 4 February 1938 doubtless brought about a more rigorous course in German foreign policy.

In the opinion of the Prosecution, Papen must have been a willing tool of Hitler for the first actions in preparation for this police. Were this applicable, then one would have to regard Papen, in consideration of the result aimed at, as a hundred-per-cent diplomat. This so successful diplomat and conspirator now does not go to some place where he can continue his activity further, where preparations might have to be made in a similar manner, as for example in the Sudetenland. He is not placed in a position, where the great political threads run together, in Paris, London or Moscow, where on the basis of his international reputation he might indeed appear as undoubtedly the most suitable man to support the Hitlerite policy.

This man retires from public life at a time when the whole foreign policy of Hitler, when the Sudeten crisi, the incorporation of the Czechoslovakia and the preparations of the war against Poland created a period of an extremely tense political atmosphere. If at that time

H0186 - 0021

Hitler did not take his services into consideration at all, then it is clearly apparent from this alone, that Papen was not a conspirator, not even a follower of Hitler and not even the instigator of the first success of Hitlerite policy, the incorporation of Austria.

In this sense it is also significant, that Papen is first called upon in a situation in which it was not the object to occupy a country, or to make preparations for the intended operations. Papen is called upon at a time when the policy of expansion of our Italian ally into Albania cause difficulties and gave reason to fear entanglements with Turkey. And so here is a clear task, that of maintaing the status of peace.

If the Prosecution cannot utilize the activity in Ankara for its own support, then it still does not avoid passing unfavorable judgement on the acceptance of the post by Papen. It ism therefore, also necessary to go into this point in detail.

Papen was also very reluctant to accept this new appointment. Twice already, in more peaceful times, he had refused the appointment out of general considerations, because he no longer watned to be active in any official position at all. Now he sees reasons to which he can no longer close his eyes. He sees a new task to which he believes it his duty to devote himself.

The entire political situation was extremely strained after March 1939. Even from a secondary flank the spark could easily fall on the powder barrel. A conflict between Italy and Turkey, could, in fulfillment of existing treaties, bring about a general war. If by his activity he could at least exclude the possibility of war to this extent, Papen must have found personal justification for taking over the mission. He was confronting the problem which confronts all those who have been called upon to cooperate within the framework of a system of which they disapprove. To stand aside, to adopt a completely passive attitude, is, of course, the easier way, particularly if no other reasons impel the person in question to accept the post. The more difficult way is to take over a task within the framework of an over-all policy of which one disapproves, which in part of its field offers an aim worthy of achievement. And if this partial field

H0186 - 0022

is of such importance that the prevention of a possible was depends on it, then the decision to take over such a mission can only be understandable and worhty of approval. If only the most remote possibility of attaining such a goal exists, then private interests and feelings must step into the background.

If one reviews what Papen really did after taking over this mission to Ankara, if one sees that by his intervention in the spring of 1939 the Italians were moderated from the German side and belligerent complications were avoided, if one considers that later Papen was successfully able to prevent the war from being extended to Turkey and the more distant southeastern territories, then in looking back one can only say that his taking over the mission against his personal feeling was the right decision.

If we saw during the presentation of evidence to what extent Papen made efforts to bring about a peace of renunciation as early as the year 1939, then we must also approve this acceptance of the mission for this reason, independently of the fact of what final success was to crown his efforts, even if one could have only figured on quite a dwindling possibility of reaching the desired goal. The assumption of such a position would finally also be justified from the moral viewpoint if he had only had as much as one single partial success, as, for example, the saving of 10,000 Jews from the deported to Poland, which has been confirmed by the affidavit of Marchionini.

In this connection I want to discuss a misunderstanding which could arise from the judicial inquiry concerning this affidavit.

In his affidavit, Marchionini points out that the lives of the Jews involved were saved by the intervention of Papen. Papen confirmed, upon interrogation, the correctness of the affidavit. This confirmation corresponds also with the facts. This does not mean, however, that the meaning of that action, as it is know to Marchionini today and which he mentions therefore in his affidavit, was already known the. Papen knew, of course, that the deportation to Poland for an unknown purpose and with an unknown goal was something very grave. This also explains his intervention. He knows onlh today, the same as Marchionini, certainly only knows today in all clarity, that the path of these people was not supposed to lead into deportation labor, but directly into the gas chambers.

H0186 - 0023

Now I should like to refer to Document 105, the answered questionnaire of the present Apostolic Annuncio in Paris, Roncolli, describing Papen's attitude from personal knowledge .

The activity in Nakara has been fully described by the witnesses Kroll and Baron von Lersner. It clearly shows a unified peace policy, a peace policy which, independently from the momentary military and political situation, even at the highes point of German victories, stressed a peace of renunciation. Papen was, according to the statements of Rose and Kroll, deeply affected by the outbreak of the Polish war and condemned it from the first.

How can such an attitude and such an activity be reconciled with the assertions of the Prosecution? Papen is supposed to have brought about the war in conspiracy with Hitler. The Prosecution believes it can deduce the criminal act from his behaviour in the years preceeding the war. No proof has been submitted as to what may have turned Papen the conspirator, into an advocate of peace. It has rested its accusations on the shaking foundation of deductions and omitted to verify whether the assertions of the Prosecution might in any possible way be in agreement with the whole personality of the defendant. In view of the nature of the indictment, one cannot be content to solve the problem by the assumption of a splitting of his personality cand an opportunistic attitude. The indictment includes crimes of monstrous proprtions. Such an indictment must alsorest on the personality of the culprit. Participation in such a conspiracy is only conceivable in the case of a complete identity with the doctrines discussed in the proceedings and described as "Nazism", to their utmost consequences. A conspirator, in the sense of the indictment, can only be a man who has given himself up entirely, with the whole of his personality, to that tima. He must be a man in whom even the last moral ties have been abolished. Such a personaoluty cannot be a phenomenon of brief duration; the readiness for such a crime must lie within the person of the culprit.

In contrast to the distorted picture of Papen's character drawn by the Prosecution, his true personality has been shown up during these proceedings in all clarity. We see a man who is rooted by origin and education in tradition and cancervative ideas, a man of consciously responsible national

H0186 - 0024

feeling, to whom for just these reasons a regard for others is natural.

His personal ties with the neighboring country in the West, his knowledge of the world, preclude from the first his seeing things from a one-sided viewpoint, according to his own national wishes. He knows that life requires understanding and the willingness to understand. He knows that international life is built on sincerity and faith and that one must stand by one's word.

We have before us a man who, on account of his deep religious feeling, which he always makes the basic principle of his actions, must necessarily stand in opposition to the ideological doctrines of National Socialism. We have followed his political career and seen that he held fast through all the periods of his activity to his basic political creed which was built on these elements.

In keeping with this fundamental principle and fully conscious of his responsibilities, he did not evade any of the tasks assigned to him. And even it we are witnessing in the end the collapse of his hopes and his endeavours, this cannot be the touchstone for the sincerity of his convictions.

To arraign such a man at all under the indictment of a crime in the sense of the facts established in the Charter can surely only have been possible on the basis of the legal simplifications which an indictment offers to the Prosecution. In the facts of the case against Papen, even this interpretation must fail.

The Prosecution has not been able to prove that Papen has at any time involved himself in the alleged conspiracy. Opposed to this is the reality. In the evidence offiered in refutation, facts are established which make a connection of his person with even the idea of the facts in the indictment impossible.

The final conclusion is clearly given Franz von Papen is not guilty of the charge brought against him.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken).

H0186 - 0025

THE PRESIDENT: I call on Dr. Flaeschner, counsel for the defendant Speer.

DR. FLAESCHNER: Mr. President, may it please the Tribunal:

The Prosecution has charged the defendant Speer with violations of all 4 points of the indictment, which essentially coincide with the stipulations of Par. 6a - c). The French Prosecution which has substantiated more definitely the individual charges against defendant Speer desists from charging defendant Speer with a violation of Par. 6a) of the Statute of the Penal Code and demands only the application against Speer of Par. 6b and c). However, since the legal concept of conspiracy during the oral proceedings has frequently been clarified by referring to the person of the defendant Speer, and since the assertion was set forth that the defendant Speer also had made himself guilty within the meaning of the Penal Code paragraph of a violation of fig. 6a) of the Statute, the details must be entered into by way of precaution.

The defendant Speer has therefore, been charged with the planning, preparations, launching and conduct of a war of aggression or a war violating international treaties, and this, indeed, at a time when the defendant assumed the office of Minister of Armaments, which was expanded to a Ministry for Armament and War Production 1½ years later, when the German Reich was at war with all countries, to which she capitulated in May 1945. At the time the defendant assumed Government affairs, all the facts mentioned under Par. 6a) had altogether taken place and defendant Speer's activity did not alter the actuall existing situation to the slightest extent.

The defendant had not contributed in the least to bring about this situation. His previous activity was that of an architect, who occupied himself exclusively with peace time construction and did not contribute by his activity, either toward preparation nor launching of a war violating internatio treaties. Please refer to my document book on page 29, document 1435-PS. If under the circumstances which Par. 6a) of the Statute materially and legally characterizes as a punishable act it were a case of generally prevailing international law, and if individual culpability of persons who bring about the facts of the cases were generally recognized in international law defendant Speer in my opinion could still not be held responsible for these facts, for

H0186 - 0026

not the slightest evidence has been produced during the proceedings that Speer contributed towards bringing about these facts. In this connection we must consider that culpability of an attitude requires that the person in question must have contributed in some way or other towards the bringing about of the facts which have been declared punishable, i.e. he must have caused the result which was declared punishable to be brought about. If, however, as in the case under consideration, defendant Speer entered the Government without having contributed anything at all towards the so-called crimes against peace, he cannot be charged with criminal responsibility for this, even if such responsibility could be applicable to other members of the government. The Prosecution used the expression that the defendant had accepted and/or approved the preceeding crimes against peace by joining the government. Such a concept taken from the field of civil law cannot be applied to criminal law. Criminal law applies only to circumstances consisting of actions which serve to bring about the circumstances declared punishable. Nor is this altered by the introduction of the legal concept of conspiracy. In this connection reference may be made to Dr. Stahmer's detailed statement on conspiracy. The legal views set forth in that statement are also made the subject of my detailed statement. In order to avoid repetition, reference is made to it, as well as to the full statements of Prof. Jahrreiss. It can, therefore, be confirmed that defendant Speer cannot be charged with a so-called crime against peace.

The personal interrogation of the defendant and the cross-examination regarding his activity have shown that Speer by virtue of his position as architect, exercised exclusively architectural - artistic functions also in the Party set-up, Speer was the commissioner for construction in the Hess staff; here it was a matter of a purely technical task, which had nothing at all to do with any form of preparation for war. The Party, which strove to seize and influence all the vital functions of the people, had created the position of commissioner for construction, to execute and shape the Party structures uniformly. For their construction projects, the regional leaders of the NSDAP and the other Party offices were to apply to this office for consultation; however, they availed themselves of this only to a very slight extent.

H0186 - 0027

THE PRESIDENT: Dr. Flaeschner, the Tribunal thinks it might be appropriate at sometime convenient to you if you were to deal with the question of the meaning of the words "waging of a warfare of aggression" in article 6-a. I don't want to interrupt you to do it at this moment in your speech but at sometime convenient to you the Tribunal would like you to give your interpretat of the words in Article 6-a "waging of a war of aggression".

DR. FLAESCHNER: Yes, Mr. President. Perhaps I might return to this point later, Mr. President, after I concluded this topic. Naturally it was a purely architectonic task, when the Party acted as person for whom building was performed.

It strove to give its buildings a uniformly representative character. Considering the peculiarity of architectionic will to fashion things, each architect naturally pursues his own intentions in solving the problems put to him. The activity of the defendant as commissioner for construction was therefore relatively restricted and of secondary importance, since he did not even have an apparatus of his own at his disposal. It would be erroneous to try to assume therefrom any participation on the part of the defendant in any crimes against the peace. The same holds true for the defendant's remaining functions prior to and during the war up to his assumption of office as minist When the defendant was given the job of reshaping the appearance of the towns Berlin and Nuernberg, this activity had nothing at all to do with any crimes against the peace; on the contrary, his activity was rather to be regarded as a prevention of war preparations, as this task of his required raw materials an equipment to a very great extent, from which rearmament might otherwise have benefited directly or indirectly. The construction projects assigned to Speer were, moreover, calculated and planned far ahead. They could only cause the impression in Speer that Hitler reckoned with a long period of peace. It is therefore, out of the question for the defendant prior to his assumption of office as Reich Minister to have contributed directly or indirectly to the realization of facts, which are characterized by Par. 6a) of the Charter as cri against peace. The fact too, that the defendant was a member of the Reichsta from 1941, cannot be quoted in support by the Prosecution, because as the Prosecution itself pointed out, the Reichstag in the authoritarian regime has

H0186 - 0028

sunk to complete insignificance and had become merely an institution that accepted and proclaimed the Fuehrer's decisions. In this respect also responsibility for the guilt of war is out of the question, for no activity whatever of the Reichstag is recognizable in extention of the war to the Soviet Union and the United States.

The special French Prosecution, therefore, justly desisted from reproaching the defendant with an offense against Par. 6a) of the Statute.

The Prosecution further charges defendant Speer with having participated during his term of office through the fact, that workers were transferred against their will from the occupied countries to Germany, where they were employed for the purpose of the conduct of war or the production of war materia The following should be said in this connection:

The Prosecution reproaches the defendant with violations of Par. 52) of the Hague Convention on Land Warfare insofar as according to this convention services can be demanded of nationals of the occupied country only for the necessities of the occupation army; moreover, they have to be in proportion to the resources of the country and must not imply the obligation of the persons concerned, to take part in military actions against their native land. The Hague convention on land warfare establishes in Par. 2) that all countries participating in the war in question must have joined it in General participati clause as it is known. The Soviet Union not having entered into the Conventi on Land Warfare, the latter could be applicable to the conditions created by the war against the Soviet Union only if the legal principles laid down in the Convention should be considered as universally valid international law. Abov all we have, therefore, to start from the principle that a different legal judgment has to be applied to those areas belonging to states that were partne of the Hague Convention on Land Warfare, and for such areas whose states are not to be regarded as treaty partners.

In examining the question, the point is to be determined whether deportation of laborers from territories occupied in war-time by an enemy powe can be justified in virtue of Art. 52) of the HLO. Art 52) which constitutes a limitation of Art. 46) ofthe Hague Convention on Land Warfare, inasmuch as the principle is stipulated that fundamentally the population of occupied territor.

H0186 - 0029

and their property are to be involved as little as the necessities of war will allow. Starting from this principle, it is now necessary to examine whether, in virtue of it, a deportation for the purpose of securing labor potential for the essential war economy of a belligerent country is prohibited to any extent. In this respect, the question must be considered, and it make a difference whether the deportation carried out by the occupying belligerent State is in accordance with conventions agreed upon with the Government of the country occupied by the belligerent State. The Prosecution have defended the view that such conventions are legally void because they were made under the constraint of occupation, and because the Government existing in France during the time of occupation could not be considered as representative of the French nation.

The first point of view cannot support the contention of the Prosecution. International juridical conventions will always be influenced in their content by the respective centers of gravity of the contracting parties. In every peace treaty concluded between a victor and a vanquished State, this proportion of centers of gravity will be reflected in the contents. This is not, however, contrary to the nature of treaties.

The second point, in virtue of which the Prosecution rejects the plea of an agreement between the German and existing French government, relative to the assignment of labor potential, is equally ineffectual. The so-called Vichy Government existing at the time was the only Government existing in French metropolitan territory; it was the lawful successor of the government in office before the occupation, and internationally acknowledged by the fact that states then not yet involved in the war preserved diplomatic relations with it.

H0186 - 0030

Moreover, it cannot be taken for granted that the disposition manifested in the conventions by the French Government to cooperate with the then victorious German Reich was in contradiction to the genuine popular opinion of the French Nation. Reference can be made in this respect to Document R 12 4, page 34 of my Document Book. Particular attention must be given here to the economical situation of occupied France at the time. After France's withdrawal from hostilities, the whole of French metropolitan territory was included in the total blockade, with the result that those raw materials not produced at home were no longer forthcoming, and production came to a standstill. Thus, a considerable proportion of the French productive potential was put out of action and a number of workers in this way were deprived of a living. Moreover, the French Government did not pledge itself to an unreserved dispatch of labour potential to Germany, but subordinated this to compensational provisions such as the liberation of prisoners of war etc.

Whether, and in what measure, the expectations which conditioned the conclusion of the convention by the French Government were actually fulfilled, is immaterial to the matter of determining whether the conventions in question were authentic treaties or not. That these agreements have the character of a treaty cannot be juridically doubted. In virtue of them the accusation of the Prosecution that the removal of workers from the occupied French territories was carried out against their will and therefore illegally, can have no justification. Agreements such as those concluded between the German and French Governmental Departments cannot be introduced as a criterion for the judgment of the legal background relative to the workers from Belgium and Holland, since in those countries the Government had deserted and consequently there was no existent political authority. The remaining General Secretaries of the Government could not be considered as Government representatives and the decrees, by virtue of which the dispatch of workers to Germany was carried out, were enacted on the directive of the Reich

H0186 -0031

Commissioner in the person of the military Commander-in-Chief.

That particular rules must apply to those countries and to the dispatch of labourers effected by them has already been explained by Dr. Steinbauer in his exposition concerning the activity of defendant Seyss-Inquart in Holland. In order to avoid repetition, I refer you to these explanations.

Where the Eastern countries are concerned, we must start from the principle that the Soviet Union did not become a contracting party to the Hague Convention of Land Warfare. It remains, however, to be examined whether the principle set down in Art. 46 of the Hague Convention of Land Warfare, with reference to the treatment of civilians in war, and in the case of occupation of a belligerent country by the enemy, is not be considered as a universally valid International Law and therefore applicable even if the belligerent country concerned is not specifically party to the Hague Convention of Land Warfare. On examination of this question, the deportation of workers from occupied territories would prove to be illegal, which means that a particular circumsta nce must come up to cancel its illegality.

The case of emergency stipulated by International Law can be considered as one such circumstance. Of course, the theory International Law is controversial as to whether and in what measure such an emergency can legalise an intrinsically illegitimate practice, but the admissibility of such an emergency must be envisaged in those cases when the State is fighting for its bare existence.

After the unconditional capitulation of Germany had been made the declared goal of the Allies, such a state of emergency was to be considered by the German State as having arisen, since there remained no doubt but that it was the intention of the enemy to destroy the German State to its very foundations.

Indeed, this emergency can be considered to have been already existent at an earlier stage, after it had become clear that the war had ceased to be, as conceived by the Hague Convention of Land Warfare, a settlement of differences between two States, and become a war in which it was sought, not only to strike at the fighting

H0186-0032

forces of the belligerents but primarily the economic forces of the belligerent Nations, and thereby what is termed as their war potential. The Hague Convention of Land Warfare rests upon a conception of war which was overwhelmed in the first World War and much more so in the second World War. If in the first World War the belligerents sought to strike at each other's economy by blockade and counter-blockade, in the second World War they have moreover, in addition to the more indirect effect of blockade, introduced direct damaging action against the enemy by the destruction of its production installations by means of aerial war. Against the conception of war at the base of the Hague Convention of Land Warfare, a complete change has come about. In view of the consideration that a country can only resist a technically well equipped adversary if it has, itself, at its disposal a potential of uninterrupted productive potential of the adversary. This was the aim of the British blockade, not only of Germany but of every country in the German sphere of influence. Dr. Kranzbuehler has already discussed the questions related to this subject. Reference can be made to his statement as far as it is concerned.

Accordingly, aerial war was primarily waged, not only to include the regions belonging to the German national territory but also to destroy the production potential and possibilities existing in the occupied territories. Aerial war, with continuous air raids, was directed against economic targets in France, Belgium and Holland, the Czech Territories, Poland, Austria, and had as its further aim the interruption and putting out of action of the whole communications system, not only on the front and its immediate rear but hundreds of kilometers behind it, with the purpose of paralysing the adversary's vital functions. The air offensive of the Allies against Japan is particularly clearly indicative of this. This war overlapped the bounds of the Hague Convention of Land Warfare. It does not make any more difference between the national territory of the adversary and the occupied territories which are likewise included in the enemy blockade. In this war, which made it its purpose to destroy not only the national existence but the economic

H0186 -0033

productive capacity of the adversary, one can speak of a real national emergency. When defendant Speer was appointed Minister, the economic war we have just described was in full swing on either side. It was indeed the task of Speer's department to solve just the production problems resulting from it. Thus, Speer was placed in the middle of this economic war.

THE PRESIDENT: Dr. Flaeschner, I would like to ask you this question. Is there any communication between States, either at the League of Nations or elsewhere, since the war of 1914-18, which suggests that the Hague Rules on Land Warfare were no longer applicable? Perhaps you would consider that question and answer it at your convenience?

DR. FLAESCHNER: Mr. President, I can already deny this question or answer in the negative. In the meantime, that is the time elapsed between the two World Wars. These problems have just been touched, and as far as I am in a position to judge, this question was touched in the matter of Naval warfare, and relative to land warfare as far as it applied to the prisoners of war. The Hague Convention on Land Warfare did not apply to special agreements dealing with special ways or means of waging wars. There are no amendments or appendices to the Hague Convention in this respect. I am thinking of various means of combat which have been in the meantime excluded in the conduct of a warfare. As far as the principles are concerned and the principles laid down in the Hague Convention, there have been no changes in the meantime.

THE PRESIDENT: Yes, then, I understand you to say there has been no communication between States since the 1914-18 War, which suggests that the Hague Rules on Land Warfare are no longer applicable?

DR. FLAESCHNER: Yes.

It must be further examined whether and to what extent the measures taken on the German side were expedient in remedying the state of emergency.

In the course of the trial, the Prosecution had claimed on several occasions that the imported labor was intended to be used

H0186 - 0034

as labor for service at the front. This is certainly one of the points of view which induced Germany to resort to foreign workers, but it is by no means the only valid, not even indeed the overwhelmingly decisive point of view. It is a fact that the total blockade of the German Reich carried out by the adversary compelled the Reich to an increasing extent to build plants for the production of substitutes in order to carry on the war in its now definitely technical form. It is another fact that the distrubances of economic life caused by aerial warfare made it necessary to resort to an increasing use of labor. Merely as an example, allow me to mention how much additional labor was necessary for the repair of air raid damage. This situation involved a state of emergency, inasmuch as the pursuit of a war of self-preservation would not have been possible without the erection of such additional production plants.

Should it be contended that there is no point in speaking of an emergency cancelling the illegality of the proceedings since the war was begun as a war of agression and was therefore illegal from the outset, the answer is that, as far as defendant Speer is concerned, this much may be said in his favor, that he believed in the existence of such a state of emergency and had reason to do so.

The examination of evidence has revealed that the backg rounds of the origin of the war, so far as they have been exposed here by the Prosecution, were not known to most of the defendants, but least of all to the defendant Speer.

Insofar as the deportation of foreign workers to the Reich constitutes an objectively illegal measure according to International Law, it remains to be examined what share of it can be charged to the defendant Speer. At his interrogation, prior to the beginning of the Trial on 18 October 1945, defendant Speer has admitted having known that, at least as far back as September 1942, foreign workers had ceased to come voluntarily to the Reich. He said he had countenanced the compulsory measure because there was no other possibility of meeting the labor requirements in a different way. It must be concluded from this declaration that the defendant was

H0186 - 0035

convinced of the necessity of this emergency measure. Subjectively, it must therefore be considered in his favour that he believed in the existence of such a state of emergency excluding illegality. But in the first place it must be examined, as to what extent defendant Speer has actually contributed to the institution of deportations to Germany. In this respect, we must start from the principle that defendant Speer had a purely technical task which he has sufficiently described in his evidence. Reference can be made thereto. For the fulfillment of his task, he stated his labour requirements. How these requirements were met has been told in detail by witnesses Schieber and Schmel. Requirements were submitted as a whole and it was incumbent upon defendant Sauckel to satisfy them. These requirements included the totality of labour required, and it was the defendant Sauckel's task to meet these requirements according to possibilities and according to his best judgment. It was for him to carry out an exhaustive round-up of domestic labour potential as well as the procurer of foreign labour. That defendant Speer made it a point to procure German labor in the first place for the tasks to be carried out by him and for which he was commissioned by the Government, has been told by witnesses Schieber and Kehrl (Doc. Book II, Pages 109, 115, 117, 118, 129) and they made these statements in their interrogation. That the satisfaction of his labour demands for the achievement of his task; the increase of armament production, was admittedly of considerable though not decisive importance, is evidenced by the testimony of witness Saur (Document Book II) according to which

H0186-0036

an increase of 4 to 4.9 million workers was achieved for the armament finishing industry during the defendants activity as Armament Minister, whilst the production of armament parts increased in the proportion of 5½ and up to 7 in many departments. It must therefore be borne in mind that the increase of armament production incumbent upon defendant Speer was primarily achieved, not through increase of labor potential, but rather thanks to technical and organizational measures. It must be once more inferred from this that, for the defendant, procurement of labour potential was admitted an important though not the decisive element in the carrying out of the task assigned to him. The defendant has quite plausibly stated that he had demanded workers from Sauckel but that he had insisted upon having German workers first of all.

In the defendant's opinion, the increase of labor potential in the economic sector controlled by him could have been achieved without resorting t. foreign labor to the extent in which it was done. The measures taken by the defendant for the purpose of preventing the deportation of workers from the West into the Reich have been adequately described by the evidence. In taking those measures, namely the removal of consumer goods production and manufactur of vital armament parts such as, for instance, forged parts, railway equipment, etc. to the Western countries and installation of protected industries there, Speer was actuated by the knowledge that the conscription of workers from France as well as from Belgium would be stopped. The consequence of his talks with the French Minister Bichelonne was, as the defendant explained at his interrogation, practically the end of the deportation of workers to Germany. The results have been accurately described by the Gener l labor Commissioner at the session of the Central Planning Board on the 1 March 1944 (p 32/33 Speer Document Book). In spite of every resistance opposed to this policy (compare Sauckel's letter to Hitler dated 17 March 1944, Document 3819-PS) Speer persevered in his purpose. The report of Hitler's conference on 4 January 1944, submitted by the Prosecution under No. 556-PS, shows too by the decision adopted, that the protected industries, the abolition of which Sauckel tried to obtain, were to remain inaccessible to seizure by Sauckel's labor conscription.

H0186-0037

(Compare also Speer Exhibit 10m page 26) Speer wanted to employ French workers in France, in the effort to transfer production of consumer goods an products which did not represent arms production to the occupied Western territories. He wished to utilize for armament production the German workers made available through the closing down of German plants. (See Document R-124, pp 33/34 of Speer document book). In this manner Speer was able to increase production, because German workers, as a result of elimination of language difficulties, could more easily be retrained and because food difficulties were eliminated. (Compare Kehrl, page 110, Speer document book).

The result of this policy was that the workers of the Western areas were preponderantly used in theproduction of civilian goods, but not in armament production.

On the question of employment of foreign labor in the protected industries it must also be said: The statute is derived from two factual circumstances; deportation for forced labor and forced labor itself. Compulsory labor in France was ordered through a decree of the French Government According to international law there could be no objection to this, unless one would take the position that the French Government was not entitled to take such measures and to issue such decrees. As was deposed by defendant Speer, French economic leadership obtained its independence through the agreement with Bichelonne, naturally with the restrictions which resulted from the agreement. As established by Borcks (see document book I, page 381), coworker of defendant Sauckel, from the protected industries of France 20% went to French economy; on the other hand more than 40% went from consumer goods industry did not manufacture weapons and direct implements of war, for the German authorities would surely not have left them to the French offices.

If in the session of 20 June 1946, that the Tribunal summarized its misgivings as to the manner in which we presented our evidence, to the effect that purposeful questions were irrelevant, then the viewpoint of the Defense, on the contrary may be established that this speech is only for the purpose of clarifying the question of legality. If the French Government was justified

H0186-0038

in decreeing compulsory labor service and if plants, employing French workers on the basis of this decree or on the basis of voluntary labor contracts, were provided with orders on German accounts, no legal objection could be raised. The establishment of protected industries which hindered the withdrawal of laborers and their transfer to Germany, and the removal of some individual branches of production to France, Belgium and Holland, led to the objective of satisfying the requirements of German Economy in a legally unobjectionable manner. Although defendant Speer did not completely check the transfer of workers, he nevertheless did succeed in decreasing their commitment appreciably. Instead of the policy of transplanting foreign workers to the Reich, a policy which was pursued by other Reich offices, the defendant pursued the objective of committing the labor for his purpose in their homeland. (Compage Speer Exhibit 9, page 24 and page 27 of the Speer document book). To this extent he worked against the tendency of deporting workers from their homeland.

In order to prove the assertion that Speer had decisively participated in the intensification of deportation for forced labor, the Prosecution refers to document 556-PS, which represents a file memo by Sauckel, concerning a telephone conversation with Speer on 5 January 1943. In contrast to this, the copy of the Fuehrer protocol of 3 to 6 January 1943, which was the object of the telephone conversation, has been submitted. Even if here also sharp remarks by Hitler are repeated, it nevertheless does not reveal the tendency which was noted by Sauckel in his file memo.

The defendant Speer was already at that time on bad terms with Sauckel. The order issued to Speer in this Fuehrer protocol for the management of the French armament industry, gave him a pretext for the establishment of protected industries. The termination of labor commitment from France was thereby accomplished, consequently, therefore, the opposite of what the Prosecution would like to prove. Reference must be made hereby to document book RF-22. There it is asserted that due to the Speer-Bichelonne agreement, labor commitment to Germany as of October 1943 had been decreased about 1/10 (compare Pag 41 Speer document book).

In weighing the question as to what extent this exonerates the defendant

H0186 - 0039

it is of no importance whether he acted in such a way for reasons of expediency or because he considered the other procedure as illegal. What solely matters in this case is the success which actually brought to an essential standstill the transfer of labor forces to Germany, as evident from the document quoted, RF-22.

It is finally evident from the Fuehrer Protocol of 19 to the 22 June, 1 Speer Exhibit 12, page 19 of the document book Speer, and the testimony of Seyss-Inquart (11 June '46), that in spite of the loss of industry in the Western territories and the intention of other Departments to bring the unemployed workers to Germany, Speer carried through the maintenance of his protected industries, and that the plan of further commitment of foreign workers to Germany collapsed definitely. The duty to examine the measures of Sauckel as to their international legal admissibility cannot be invoked in the case of the defendant Speer a this for the following reasons:

When he took over his post in the year 1942, the transfer of foreign la to Reich Territory had already been practiced for some time. Speer relied o the assumption that the legal foundations for these measures had been examine before their introduction. He did not have the legal duty of examining independently the legal basis; he could rely on the assumption that the offices handling labor commitment had examined the legal basis of their activity. He had it confirmed to him repeatedly by the Plenipotentiary for Labor in the course of his activity that the transfer of labor to the Reich was carried ou strictly within legal limits. He could rely on it that the authorities charg by the St ate direction with the tasks of procurement of labor would, on their part, examine the measures carried out by them for the execution of these tas as to their legal admissibility. The activity of the defendant within the framework of the State direction could, if transferred to civil law, be compared with that of the technical ks Manager of a factory, whereas Sauckel position would correspond to that a director of the personnel office. In such a case the technical Works Manager's duty is not to examine if and to w extent the employment contracts concluded with the individual workers conform to legal regulation.

H0186 - 0040

He has only to see to it that the labor forces put at his disposal to carry out his tasks are being employed in the right place and in the right manner. This cannot be countered with the argument that the defendant Sauckel merely considered himself as the deputy of the defendant Speer. This would not present a just picture of the distribution of tasks between the two co-defendants as carried out by the State direction. The fact cannot be overlooked that of all the sectors which put in their requisitions to the defendant Sauckel, the ones presented by the defendant Speer were the most important for the conduct of the war and, therefore, had priority over the others.

This does not mean, however, that is was Sauckel's duty to satisfy absolutely all the demands of the sector represented by Speer before all the others. He did not do this, as is evident from the collective evidence, particularly the testimonies of the witnesses Schieber -- Document Book II p. 114, and Kehrl -- Document Book I p. 106, and could not even do this, as the demands of the other sectors, which were all designated as "Bedarfstraeger" (users), were very often equally urgent, and the labor potential at hand was not sufficient to fill all the demands equally. Had Sauckel not been more than a "deputy of Speer", a tool who had only to carry out the instructions of Speer, the profound differences between the two could never have come into existance.

It has been emphasized by the Prosecution that the appointment of the defendant Sauckel as Plenipotentiary for Labor was made possible through the intervention of the defendant Speer, and that this gave reason to believe that Sauckel had been more or less a tool of the defendant Speer or depended on him to a large extent. This assumption does not correspond with the facts.

When he assumed his functions as Armament Minister, the defendant Speer discovered that the procurement of labor for the plants which had up to then been carried out by the Ministry of Labor could not fill the demands made on them. This activity represented, within the frame-work of the Ministry of Labor, only a small fraction of its overall functions.

The defendant Speer declared in the course of his interrogation that the Ministry of Labor could not overcome sufficiently the tendencies of the Gauleiters in their various districts, because every Gauleiter had the am-

H0186 - 0041

bition to prevent the transfer of workers from his Gau to another to the be of his ability. The department of the Ministry of Labor, with its pure redtape, did not appear to be capable of this task, and the suggestion was to the State direction to charge a Gauleiter with this mission. The demand connected with this suggestion of Speer, namely to put the Gauleiter charged with the procurement of labor under him was not granted by the State direction, and this because of other existing competencies. The person proposed by Speer was also turned down, and the defendant Sauckel was appointed instead. Therefore, only organizational reasons were involved in Speer's endeavors to create a Plenipotentiary of Labor, the purpose of which consisted in overcoming the above-mentioned opposition directed against the activity of the Labor Procurement Office of the Ministry of Labor. To draw from these facts the conclusion that the defendant Speer was responsible for all the measures ordered by the defendant Sauckel would be erroneous.

The fact that the defendant participated in the sessions as a member of the Central Planning Board, in the course of which the problem of the Procurement of Labor was discussed, cannot be used to support the claim of the Prosecution. The Prosecution attempts to prove, as a result of the sessions of the Central Planning Board, that the defendant Speer had played a leading part in the procurement of labor from foreign countries. To counter this the following must be stated : The Prosecution has only submitted the texts of the minutes of the Central Planning Board; that is the minutes which were taken down regarding the course of the session, but not the decisions which were made on the basis of this session, These, however are decisive.

However, all the defendant Speer's reports include also resolutions the Central Planning Board and contain notes placed at the disposal of the Allied authorities, it would have been easy for the Prosecution to present such conclusion, from which a decisive cooperation of the defendant in the procurement of labour could be deduced. Such conclusions do not exist, however, and cannot therefore be drawn from the fact that at the conferences of the Central Planning Board questions of labour mobilization were mentioned which the Central Planning Board had taken over in its sphere of activity.

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H0186 - 0042

The decree regarding the establishment of the Central Planning Board is given in Speer Exhibit No. 7 under No. 42. In it the labour sphere of the Central Planning Board is firmly outlined. The procurement and distribution of labour should not be included in the sphere of competence of the Central Planning Board as the new office of the Plenipotentiary of lab was created just for that purpose. It follows also from the testimony th when the co-defendant Sauckel discussed fully the question of policy of l commitment before the Central Planning Board, he underlined sharply his independence of the Central Planning Board and laid weight thereon that is decisions were accountable only to the Fuehrer in the last instance. Fo this I refer to the testimonies of the witness Kehrl and the witness Schieb Speer Exh. No. 36 and 37. Nothing contradicts the fact that attempts were made in the Central Planning Board to influence the sphere of activity of t General Plenipotentiary for Labour. These attempts, however, did not lead to any results.

In principle it results that the responsibility of the defendant Speer for the transportation of labour from the occupied territories to the Reich cannot be deduced from his activity within the framework of the Central Plan-ning Board.

If the Prosecution charges the defendant with having known that a great portion of the workmen made available to him by Sauckel were brought to Germany against their will and that he used these workmen in the industry under his supervision, this conclusion encounters legal criticism.

If and in so far as the removal of labor to the Reich was a violation of International Law, such crime would be terminated with the removal of labor to the Reich. The fact that the persons removed into Reich territory were assigned for work established, legally speaking, a new act of facts to which the Prosecution applies the concept of "slave labor".

In this connection the following should be considered: By reason of the Reich Compensation Law and the enactment decree there existed for every German an obligation to make his services available for war purposes. Through the Labor Office as highest instance, the State leadership could dis-pose of the labor of every State national for any purpose it deemed appropri-te, and it did so.

H0186-0043

Foreign workers who were removed to Germany became likewise subject to this regulation. There is no attempt made on our part to deny that no provision is found in the Hague Convention on Land Warfare itself which would support labor compulsion in force for German nationals to be extended to inhabitants of the occupied territories. Since the Hague Land Warfare Convention reflect the influence of a different concept of warfare, it could not yet take conditions into consideration which were brought on by economic warfare. Yet it is not possible to answer affirmatively the question whether the Hague Land Warfare Convention conclusively regulates the summariness of all powers incumbent upon an occupation authority. An affirmation is contradicted by the practice of all nations who participated in this war. But in this respect also the angle of the above-mentioned State emergency situation can be resorted to for a correct evaluation and appreciation of the case. It should be admitted that the Prosecution is right in that this extension of labor liability can be justified from that point of view only.

Assuming the Prosecution's contention of a lack of legal justification for the extension of labor liability to foreign nationals of occupied territories, there remains the need for checking the extent to which culpability could be claimed for the defendant Speer because of the employment of labor held under such compulsion. That the defendant Speer although he was not responsible for this, still attempted to facilitate the living conditions of these workers and that he also helped to correct bad conditions -insofar as these come to his attention- is shown by Exhibits 3, 4 and 5 of the Speer document book, pages 7,8,9, of the document book, be made to the testimony of the defendant himself, in direct examination as well as in cross-examination, when he described his activity in that field.

Justice Jackson, the American Chief Prosecutor, when placing before the defendant Speer during his cross-examination a series of documents, purportedly to prove the bad treatment of foreign workers by the firm of Krupp in Essen, himself stated that he does not hold the defendant Speer responsible for such individual incidents, See page 11861 of the German transcript of Court proceedings.

H0186-0044

The documents involved were the affidavit of Dr. Jaeger, document D-288, discussed by Dr. Servatius; a letter of the Locomotive Manufacturing Department of the firm of Krupp, dated Feburary 1942, just after the defendant Speer had taken office as Reich Minister. Conditions as described therein had called for Speer's intervention with Hitler in March 1942, Speer Exhibit No. 3, page 7 of the Document Book Speer. Another document also submitted, document D-321 describes conditions as they prevailed when Russian laborers came to Essen in 1941; in other words, before the defendant Speer took office.

Document D-258, USA Exhibit No. 896, which camp up during cross-examination was not produced as proof of charge against the defendant, as stated by Justice Jackson, see page 11872 of the German transcript of Court Proceedings. Further documents then submitted all deal with incidents in the Krupp Works.

To the extent to which he was able to do so, the defendant explaind all of them. These documents sh w that improper conditions of a general nature for which the firm of Krupp might beheld responsible resulted from the effects of air bombardment and demolition of living quarters incidental thereto. But even if the incidents cited should have actually occurred with that firm -- which the defense is not in a position to verify -- these incidents would not supply adequate ground for the assumption that the conditions under which foriegn laborers worked in armament industries were uniformly the same. Picking out only

H0186 - 0045

on firm and examining it does not permit the drawing of conclusions as to a whole system. But only findings covering the system as such would yield evidence.

It is true that this activity of the defendant Speer would not essentially influence criminal evaluation of his actions in principle, but it would be of decisive import in establishing the measure of his participation.

When the defendant took office, the practice of employing foreign labor and prisoners of war was already in existence; it is not he who introduced it. Thus he should not be considered as the originator, which may likewise deserve to be taken into account for the establishment of judgment, since it did not seem possible to abrogate the practice after its establishment. The employment of foreign labor in German economy was not something unusual. In peace times also a great number of foreign laborers were employed in agriculture, in mining, in surface and in underground workings.

During the war foreign laborers from the East as well as from the West had already been brought to Germany to a considerable extent, even before the defendant Speer took office, and only a portion of them belonged to the sector under Speer's control.

In order to divide the spheres of jurisdiction of the two defendants, Sauckel and Speer, how assignment and distribution of workers into the establishments most recently under the control of the defendant Speer was handled will be described below. Acting in behalf of the Speer Ministry, Commissions and pools assigned to the individual establishments certain productio tasks as part of the armament progran. The factory then figured out the number of workers needed. This was reported to the Armament Command and at the same tir also to the Labor Office where labor requirements of all works were recorded. The Armament Commands examined all requests for workers received from all works under their jurisdiction and passed them on to the Armament Inspection Offices. Labor requirements reported to the Labor offices were forwarded by them to the Gau Labor Offices. Armament Inspection Offices collected the requests and forwarded them to the Speer Ministry, Labor Mobilization Division. The Gau Labor Offices directed applications which they received to the General Commissioner for the Commitment of Labor. In this connection it is noteworthy that in 1942 the Speer Ministry controlled only construction work and Army armament. Navy and Air armament handled their requests for labor independently. In the spring of 1943 Navy armament was assigned to the Speer Ministry; from

H0186-0046

then on, Navy handled its labor requisitions by way of the Labor Commitment Division; in the fall of 1943 the rest of production was added while Aircraft armament continued to handle its requisitions independently through the General Commissioner for the Mobilization of Labor until August 1944.

An account of these details is indispensable in order to show that the Prosecution's assumption, according to which Speer is seen as the main beneficiary of Sauckel's mobilization of labor can be disproved. Incidentally, it is mentioned that alongside of the Speer Ministry there existed essential industries and agencies of equal importance, for instance the Wehrmacht Administration, the Transport System and so forth; this has also been confirmed by the testimony of witnesses. The General Commissioner for the Commitment of Labor distributed the labor at his disposal among the various essential industries and agencies, assigned the required labor to the Gau Labor Offices who, in turn, referred them to the local labor offices where allotment of individual laborers to the individual establishments was handled on the strength of applications which had undergone examination through the branches of the Armament Offices. This cumbersome type of procedure was possible through the introduction of the so-called "red-slip process" which was applied in the case of exceptionally urgent production assignments (Speer Exhibit No. 37, page 122 of Document Book). A certain number of red slips were made available monthly by the General Commissioner for the Commitment of Labor to the Armaments Ministry, for distribution by the latter to the individual industrial works under its supervision by way of the industries self-administration agencies. The individual factory then presented these red slips to the Labor Office, and these requests for workers covered by red slips were acted upon without regard for the requirements of other essential industries and agencies, and not until then could allotment of labor be made to other establishments. In all instances where normal requests for labor are involved, allotting was exclusively in the hands of labor authorities under direction of the defendant Sauckel, so that neither the individual factory nor the offices of the defendant Speer nor the latter himself had any influence on the distribution. The question whether local labor or foreign labor, or prisoners of war were used to satisfy requisitions was left for the Labor Authorities to decide (Document Book II,

H0186-0047

page 108, 109).

In concluding the presentation of evidence, the Prosecution submitted the decree of 1 December 1942 (Document No. 4006-PS), issued jointly by Speer and Sauckel. The Prosecution contends that this document and the decree of 22 June 1944, simultaneously submitted, furnish a basis for appraisal of the power ratio between Speer and Sauckel. Therefore, some comment on this is appropriate.

From the decree of 1 December 1942 it is clear beyond doubt that the General Commissioner for the Commitment of Labor was authorized to examine requests for labor, to the extent to which they came from the armaments industry. If then a case arose that a factory asked for the additional laborers required to carry out the production job assigned to it, the General Commissioner for the Commitment of Labor reserved to himself the right of examination as to its necessity. The intention was to make the individual factory exert the greatest possible economy in the use of labor within its own works. Another purpose of these commissions was to establish the extent to which an establishment might be in a position to spare of its own labor for work in other plants, without impairing the task assigned to it. It was the task of the Armaments Ministry and of the agencies under its authority to determine the priority range in the consideration of requests for labor received by establishments under its jurisdiction. They also had to determine which of the plants was in a position to make workers available to other plants whenever both made the same product for the same Wehrmacht requirements. As an example, supposing the supply program to be modified for a plant manufacturing vehicle supplying articles, it was left to the Armaments Commands to decide whether the labor power thus set free should be assigned to another factory in the same line of production. In general, the allotment of labor remained in the hands of the General Commissiner for the Commitment of Labor. The agencies of Speer's Ministry were merely concerned with directing the labor already available to these branches of industry as assigned to these establishments through the General Commissioner for the Commitment of Labor.

The procurement of other labor was now, as before, in the hands of the Plenipotentiary General for Labor, and furthermore the Plenipotentiary-General

H0186 - 0048

for Labor participated authoritatively in the examination of the question as to what extent plants could release labor in order to make it available to others. Combing-out action. The authority of the Plenipotentiary General for Labor was therefore not limited to any extent through this mutual agreement between him and the Reich Minister for Armament and War Production. His task was merely now as before to procure labor for the plants, he was even given a considerable amount of authority in labor questions, to look over the armament plants subordinated to the defendant Speer and to examine if and to what extent these plants could make labor available for other plants. The decree of 22 June 1944 ordered that labor which was already available was to be used in accordance with directives of the Central Authorities or according to the orders of the Chairman of the Armament Commission. It must also be noted in this respect that it was not a matter of using new labor unskilled in armament work which, now as before, was procured through the Plenipotentiary General for Labor, but solely so-called transfer-actions from one armament plant to the other. The Sauckel Agencies therefore could no longer, in accordance with this decree, check the demands for labor on the part of the plants subordinated to the Speer Ministry, if the Chairman of the Armament Commission had recognized these demands. This decree did not bring any change in the basic distribution of authority, according to which the Plenipotentiary-General for Labor had to procure the required labor and handled the whole allocation of labor. If the Agencies of the Plenipotentiary-General allocated labor on a demand for labor which had already been checked, then it was left to their decision as to what labor, if native or foreign etc. was to be furnished. The authority of the Agencies of the Minister for Armament in questions of the commitment of labor were limited to a large extent to the execution of so-called transfer-actions, i.e. assignment of labor from one armament plant to another. It would be wrong to try to conclude a considerable limitation of the authority of the Plenipotentiary-General for Labor and afundamental expansion of Speer's authority from these decrees. It would be just as wrong to conclude from this that the influence of the Armament Ministry had been increased over other authorities of the Plenipotentiary-General for Labor.

In order apparently to characterize the relationship between Speer and Sauckel, the Prosecution has finally submitted a file note of General Thomas,

H0186 - 0049

the Director of the War Economy- and Armament Division in the OKW regarding a discussion between the defendant Speer himself on the one hand, and the Directors of the Armament Offices of the three branches of the Wehrmacht on the other hand of 24 March 1942, in which Thomas states that the Fuehrer considered Speer as his main authority and his trustee for all economic spheres. This note can only be understood in connection with the report of the account which General Thomas gave regarding his activity as Director of the War Economy and Armament Office, and which has been presented in excerpt form to the Tribunal under file No. 2353-PS. Prior to Speer's appointment as Minister for Armament, Thomas had tried to effect that the position of the General Plenipotentiary for Economy, which had been provided in the Reich Defense Law, would be expanded to an Agency which would control the whole war economy. When now the armament economy was confronted with high demands in connection with the first winter campaign in Russia and the losses which had been sustained there, and Hitler, after the death of Dr. Todt, appointed Speer to be his successor in the Ministry for Armaments and Munitions, Thomas thought to see in Speer a personality who would receive the authority which he had striven to obtain for the General Plenipotentiary for Economy. This, however, did not occur. As has been shown from the evidence, Speer only received the army equipment and the construction system. The subordination of the new agency of the Plenipotentiary-General for Labor under his Ministry, for which the defendant Speer was striving, was not sanctioned by Hitler. Speer's rights as Minister for Armament are stated in the decree. The generally maintained expectations of General Thomas, which the latter had linked with Speer's appointment, were therefore not fulfilled in any way. Speer only received an increased authority when, in the year 1943, he took over industrial production from the Ministry of Economy. But even

H0186 - 0050

then he was still far from having the sphere of work which General Thomas had expected for Speer. Based on this expectation General Thomas thought to see, in theperson of Speer, the man appointed by Hitler who would be decisive for all economic questions. In the file note of General Thomas, which confined itself merely to generalities, it is a matter of an expressi of opinion which was not justified by the actual state of affairs. It offe no basis for the reply to the question as to how the responsibility for the policy of the commitment of labor objected to by the Prosecution can be distributed.

In summarizing it must be stated to this count of theindictment:

Speer is not responsible for the means employed for theprocurement of foreign labor, nor for its removal to Germany. He is at themost responsible for theutilization of part of this labor in Germany.

As a further count of the indictment it has been stated that the defendant had employed prisoners of war in the economic sector which was under his direction, and that he had thereby violated Article 32 of the Geneva Convention of 1929 regarding thetreatment of prisoners of war used in plants under his control. This, however, cannot be regarded simply as a violation against Article 31 of thepreviously mentioned agreement. The expression "armament economy" and/or "armament plant" does not have the sam meaning as "plant" and/or "economy", whose task is the manufacture of arms and direct war requirements.

The term "armament plant" can only be understood from its development When, at the beginning of rearmament, the limitation of raw materials began, plants which were working for rearmament were given preference in obtaining raw materials. These plants were subordinated to the armament inspections established by the Wehrmacht, and were called "armament plants." In addition to all other plants, those which served the manufacture of iron, steel and metals, as well as those plants which manufactured machine-boilers and vehicles and appliances -- also the entire manufacture of raw steel and the first stage of preparation (foundries, rolling works, forges) -- as well as the whole remaining subsidiary supply industry, were included in it. So, for example, electro-technical plants, plants which produced optical products, plants which manufactured ball-bearings, cog-wheels, etc. This is shown by the testimony of the witness Schieber. (Exhibit No. 37, Question

H0186-0051

9, Document Book page 114).

Approximately 30-35% only of the whole iron production was used for the production of armament to the extent as previously described, and 60% for the maintenance of production or for other consumers -- Reich Railroads, construction of merchant vessels, agricultural machine, export goods, appliances for the chemical industry, etc. We refer to the testimony of the witness Kehrl, which has been submitted under Speer Exhibit No. 36, and particularly, to his answer to question 5.

Since the iron quota assigned to the armament industry also includes the manufacture of raw steel and the stages of manufacture, it can be safely presumed that of all theplants which were combined in thearmament inspections, only approximately 20-30% manufactured armament products within the meaning of the Geneva Convention. The details had to be treated individually, in order to gain an idea as to what extent article 31 of the Geneva Convention could be violated by the employment of prisoners of war.

The Prosecution has presented an Affidavit of the American economic statistician Duess under No. 2520-PS, in order to prove thereby how many prisoners of war and foreign workers were employed in the armament industry The compilation, which is principally supported by numbers taken from the documents, in the possession of the defendant Speer, do not, however, state in which branches of the armament industry the individual prisoners of war worked. A big enterprise, which, because it falls under one of the above-listed categories, and as a result thereof was considered an armament plant in its entirety, needs only to manufacture a fraction or perhaps no weapons or equipment which stand in direct relationship to war activities. If prisoners of war were employed in it, then this occupation does not represent a violation of Article 31 of the Geneva Prisoners of War Convention. Such a plant, however, appears collectively in Duess' Affidavit. The Affidavit thereby loses its value as evidence as to if and to what extent the Article 31 of theGeneva Convention was violated by the employment of prisoners of war in armament.

The French Prosecution has represented the point of view that the employment of French civilian workers who had been released from prisoners of war confinement and who were employed in the armament industry was also

H0186 - 0052

to be considered a violation against Article 31. This is not applicable. Beginning with the time of their release, the former prisoners of war were free people, unlimited in their freedom of movement, and limited only by the obligations embodied in the contract of employment. In addition to this, no French prisoners of war could be forced to agree to his release with the obligation to make his labor available to German industry. It was his free decision if he preferred to accept his release as a prisoner of war under these conditions. From that moment on he was no longer a soldier, no longer subject to military discipline; he received his working wages like every free worker, and was not subjected to any camp discipline or any other similar circumscribing regulations.

To these amongst the prisoner of war who preferred to agree to their release under these circumstances, these advantages apparently appeared more valuable than the protection which they enjoyed as prisoners-of-war. If they did this then their occupation, even in work which in itself is prohibited for prisoners of war in accordance with Article 31, cannot be considered a violation of this Article.

The employment of prisoners of war in the industry of the country which is holding them prisoner is not prohibited by the Geneva Prisoner-of-War Convention. Only that work is prohibited which is directly connected with military operations, for example, the use of prisoners of war for fortification works for a combat unit. The defendant Speer cannot be accused of anything of that kind. The manufacture and transport of weapons of all kinds, as well as transportation of war materiel for the combat units. In the armament economy, under the control of the defendant Speer, the only thing which could be considered as a viola of the aforementioned rule is the manufacture of weapons and ammunition of all kinds. Such a violati however, has so far not been proved by the Prosecution at all.

It must furthermore be examined how the assignment of prisoners of war to plants took place. According to the testimony of the defendant Sauckel, this was done by the War Economy officers with the Military District Commanders submitting the number of prisoners of war available for work to t District Employment Office, and the transfer of the prisoners of war to the plants then took place in the same manner as with usual labor. A differenc

H0186 - 0053

only existed in that the camp officers -- the prisoners-of-war were billeted in so-called enlisted men's camps (Stammlager) -- were responsible that the directives issued by the OKW for the employment and the treatment of prisoners of war were complied with. It was the responsibility of these camp-officers, that, in the employment of prisoners of war, a violation of Article 31 of the Prisoners of war Convention was rendered impossible. The Commitment Officers (Einsatzoffiziere) appointed by the camp commanders had constantly to control and examine the working conditions and the kind of occupation of prisoners of war in armament plants, and they had to watch and see that no prohibited work was imposed on the prisoners of war. The defendant Keitel has given an exact description of the manner and procedure in which the controll of prisoners of war in thehome area was exercised. Documents have also been submitted which give information about the treatment of prisoners of war.

The prisoners ofwar who were confined in Assembly Camps were constantly examined by Camp Commitment Officers to see that the employment of prisoners of war was in accordance with Article 31 and 32 of the Geneva Prisoners of War Convention. As far as French prisoners of war were concerned, a special competence existed in the person of Ambassador Scapini, who had to forward any probable complaints against the use of prisoners of war labor in violation of international law to the OKW.

Complaints of this sort by Ambassador Scapini were immeidately investigated, and if they were found to be justified, improvements were made. It is of course, possible that in such a large organization as the large number of French prisoners of war made necessary, mistakes would occur occasionally. Measures for the correction of mistakes of this kind, are, after all, provided by the Geneva Prisoners of War Convention itself in its regulations. These regulations were also effective in the last war. The representatives of the Protecting Powers have intervened against bad conditions, which had been brought to their attention on the basis of complaints, and they have also demanded and achieved their abolition. If such mistakes were recognized and reported, they were then immediately remedied. It would be incorrect to try to conclude a premeditated system from individual occurrences. The protection of prisoners ofwar, which they found in the Labor Commitment officers,

H0186 - 0054

even laid defendant Speer open tocritidism by individual plant directors as being too extensive.

As far as thelegal regulations of the defendant Speer in this respect are concerned, it must be first examined, if theemployment of prisoners of war in the armament industry is to be fundamentally regarded as a violation of the rules of international law. After the previously -mentioned statements regarding the character of the plants which were combined in the armament industry, this must be answered in the negative. Only in so far as prisoners of war were actually employed on the production of arms and on the production of immediate war materials could be speak of a violation of Article 31. That this regulation may have been violated in individual cases will not be denied by us. If, for example, thephotographs submitted by the American Prosecution show that near the front lines prisoners of war were used to unload munition-trains, then this doubtlessly represents a violation of the regulations of Article 31. The defendant Speer, however, cannot be accused of such incidents, as they do not fall under his competence. To conclude a violation of the regulations of the Geneva Prisoner of War Convention on a large scale, that the employment of prisoners of war in the armament industry did take place, is not applicable.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken until 1400 hours).

H0186 - 0055

AFTERNOON SESSION

(The Tribunal reconvened at 1400 hours.)

M. LANOIRE: Mr. President, I would request the authorization of the Tribunal to make a very short s[illegible] in the name of the French Prosecution. Even though it is not the custom that the Prosecution should not intervene in the course of the discussion, the counsel for Speer gave a few opinions which it seems to me I must underline, and also request the Tribunal to put them aside

THE PRESIDENT: The Tribunal does not think it is appropriate that the speeches of the defendants' counsel should be interrupted by counsel for the Prosecution. Counsel for the Prosecution are going to speak afterwards, and they will then have a full opportunity of answering the speeches that have been made on behalf of the defendants.

M. LANOIRE: Certainly, Mr. President.

THE PRESIDENT: Dr. Flaechsner, if you will wait one moment, I have an announcement to make. The Tribunal refers to its order of 23 February 1946, Paragraph 8 of that order, which is on the subject of the statements which the defendants may make, under Article 24 of the Charter.

In view of the full st[illegible] already made by the defendants and their counsel, the Tribunal assumes that if it is the defendants' desire to make any further statements, it will be only to deal with matters previously omitted. The defendants will not be permitted to make further speeches or to repeat what has already been said by themselves or their counsel, but will be limited to short statements of a few minutes each to cover matters not already covered by their testimony or the arguments of counsel.

That is all.

DR. FLAECHSNER: A further reproach of the Prosecution refers to the violation of Art. 32 of the Geneva Prisoners of War Agreement, according to which prisoners of war were employed in unhealthy work, in so far as prisoners of war had been employed in mines. For this a reference is made to the minutes of a Central Planning meeting where the employment of Russian prisoners of war in mines is discussed. The employment of Russian prisoners of war in mines is not to be considered as forbidden in itself, and it has been practised in all industrial nations. The employment of Russian prisoners of war in mines is,

H0186-0056

therefore, not to be objected to, in so far as the prisoners concerned were in a physical condition that enabled them to do heavy mining work. It has not been established and proved by the Prosecution, that these prisoners of war were not physically fit for the work given them. From the fact, that the employment of prisoners of war in mines was discussed and approved, it cannot be concluded that Art. 32 of the Prisoners of War Agreement was violated. The treatment of prisoners of war has to be examined legally from various points of view. The German Government has taken the point of view, that Soviet prisoners of war should be treated on a different legal basis than the subjects of the Western States, who were all parties to the treaty of the Geneva Prisoners of War Convention of 1929, whereas the Soviet Union had not signed this agreement. The Soviet Prosecution has presented Document EC 338/USSR 356, an investigation according to international law of the Foreign Counter-Intelligence Office (Amtes Ausland/Abwehr) in the High Command of the Wehrmacht, concerning the legality of the regulations issued on the treatment of Soviet prisoners of war, and levelled sharp criticism at the latter. The essential point is that in this report the view is expressed, that as a matter of fundamental principle, Soviet prisoners of war cannot be treated according to the rules of the Geneva Prisoners of War Agreement, because the Soviet Union did not participate in this, and that this report refers to the decree of the Soviet Union of 1 July 1941 concerning the treatment of prisoners of war, concerning which the opinion of the High Command of the Wehrmacht, Foreign Counter-Intelligence, establishes that on essential points it agrees with the rules of the Geneva Prisoners of War Agreement. It is, however, characteristic, that in this decree it is ordered that non-commissioned officers and enlisted men taken prisoners of war

H0186 - 0057

may be put to work for industry and agriculture inside the camp or outside, and that the only restriction is that the use of prisoner of war labor is forbidden; (a) in the combat area, (b) for personal needs of the administration as well as the needs of other prisoners of war. (So-called "orderly service; see page 12/13 of the Doc. Book). An order restricting the use of prisoner of war labor according to Art. 31 and 32of the GenevaPrisoner of War Agreement is not to be understood from the above-mentioned command. It now remains to investigate whether the stipulations of Art. 31 and 32of the Geneva Prisoner of War Agreement flow from general rules of International Law, which should be observed, even if there were no special ruling by treaty, such as the Geneva Prisoner-of-War agreement represents. This cannot generally be affirmed. The above-mentioned treaty regulations cannot be regarded as the prescription by treaty of a generally valid legal concept, if so important a member of the family of International Law as the Soviet Union does not accept a ruling of this sort. Proceeding from this idea, the employment of Soviet Prisoners-of-war in work forbidden by Art. 31 of the PGW Agreement is not to be objected to. The Italian military persons interned in Germany after Italy's fall do not come under the regulations of the GenevaPrisoner-of-war agreement since no state of war existed between Germany and Italy. Moreover, these military internees did not come under the restrictions of Art. 31 in their employment as manpower. It must, however, be pointed out that these military internees are comprised in the enumeration by Mr. Deuss, of Prisoners-of-war occupied in the armament industry.

In conclusion, the following is to be said on this point:

Theprocurement of prisoners of war for the factories was effected exclusively through the offices of the General Plenipotentiary for Labor Commitment. The control of the proper allocation in accordance with the Prisoner-of-War agreement depended on the Labor Commitment Officer of the Stalag, who in return was himself finally responsible to the General for Prisoner-of-War matters at the Army High Command. It was not possible for the defendant Speer to have any influence on the distribution of prisoners-of-war and their occupation. The Prosecution has not been in a position to bring any proof fromwhich the participation of the defendant Speer to unlawful occupation of prisoner of war might be deduced. These assertions of the Prosecution have remained unproved.

H0186 - 0058

The Prosecution has now further brought against the defendant the charge that the Todt Organization, at the head of which Speer was placed in February 1942 after Dr. Todt's death, had used native workers to build fortifications in the French coastal areas. As far as the Todt Organization is concerned, it is a purely civilian institution of the General Construction Inspector for road maintenance. It worked on a private economical basis, that is, it gave out the construction work that it intended to carry out to private firms, also to foreign firms, which were established in the respective countries, and merely supervised the execution of the constructions. The private firms could undertake the procurement of the necessary materials and labor themselves. For the very reason that native construction enterprises were used, it was possible to eliminate the difficulties which otherwise would have opposed themselves to the execution of the work. The workyards of the Todt Organization enjoyed a certain favor with the natives because the workmen had the assurance that they could not be compelled to go to Germany to work in industry there because these places of construction of the organization Todt were considered as urgently important. The workers went voluntarily to the firms which were active for the Todt Organization to obtain this security. The example quoted by the defendant Speer during cross-examination of 50,000 Todt Organization workers who were once taken from France to Germany to repair damages caused to two West German valley dams by air attacks, made such a bad impression on the workers employed in other Todt Organization construction sites that nothing else left to do but to send these 50,000 workers back to France. In the meantime, many workmen of the Todt Organization construction sites in France disappeared, because they feared to be taken to Germany sooner or later against their will, while up to them they had regarded employment in enterprises which worked for the Todt Organization as insurance against an eventual transfer to Germany. Only the return of the above mentioned 50,000 workers to France, which was brought about by the defendant Speer when these unfavourable consequences developed, restored the hitherto existing state of confidence. Here also the reason should be emphasized that the fact results from the event described that the Todt Organization workers were free to go where they wished in France in any case, that no coercion was used against them.

H0186 - 0059

The consequences of this was that when the protected plants (Sperrbetriebe) were established in France, all enterprises working for the Todt Organization were declared protected plants and therewith removed from the possibility of being employed on other work. This instance shows that the view of the Prosecution that the workers of the Todt Organization were forced into the Todt Organization plants against their will is a wrong interpretation.

As it is established that the French government agreed to the use of French workers in construction sites under administration of the Todt Organization, as well as in any other armament industries in Germany and occupied territories, every illegality is excluded. It should not be left unmentioned here, that after the conclusion of the Armistice Agreement with France the latter had no more part in military hostilities. The Armistice Treaty certainly did not mean an agreement for a truce but de facto, a final stopping of hostilities, and was to serve as a preparation for the conclusion of peace. It was a situation, which no longer signified war, but also did not yet mean the definite return to peacetime conditions regulated by treaty. A resumption of hostilities was, however, according to both partners to the Armistice, completely out of the question. The armistice was to regulate exclusively the situation until the definite conclusion of peace. Prescriptions of the Hague Convention, as well as of the Prisoner-of-War Agreement concerning the restriction that performance of services cannot be allowed to violate the loyalty towards one's own country which is still fighting, do not apply because the country is no longer at war. After a general armistice, the production of arms and munitions can no longer be directed against the party which has retired from hostilities, but only against other partners still in the field. The aforementioned principle of respecting the duty of faithfulness to one's own country can in such a case no more be applied.

It must moreover be pointed out that the Organization Todt was in no way a para-military organization as has been falsely asserted. Apparently this false assumption has been strengthened by thefact that the German members of the administration of the Organization Todt abroad wore a uniform. These people were considered as Wehrmacht followers, but on the other hand the labor engaged by the firms and the construction workers of the firms as well as the technical personnel were in no such relation. The reproach cannot be made, therefore,

H0186 - 0060

that these native workers were indirectly incorporated into a Wehrmacht organization.

A further reproach against the defendant Speer consists in the fact that prisoners from concentration camps were employed in the economic sector controlled by him. The defendant admitted this. A penal responsibility because of this fact does not, however, stand the test of a legal verification. The employment of convicts for work of an economic nature has always been a practice in Germany. It could be carried out in various ways, partly by employment within the convict-prison itself, partly outside. Owing to the lack of labor due to the aggravation of the economic war, it was necessary to draw upon the labor available in the concentration camps.

The Prosecution has submitted documents from which can be seen how much trouble the offices subordinate to the Reich Minister Himmler took to use the reserves of labor contained in the concentration camps for the construction of their own SS plants, and the defendant Speer has supplied information during his hearing before the Court on 20/21 June regarding the efforts of Himmler tending towards building up a separate armament industry of his own, and subordinate to him only; which would have had the result that any control over the production of arms in these intended SS plants would have become impossible, so that the SS could have provided themselves with weapons without the Army or any other offices being able to control them. The defendant Speer successfully fought against this. It was agreed that Himmler would release a part of the inmates of the concentration camps to be employed in the armament industry. Hereby the inmates of the concentration camps gained an improvement of their situation, since in the first place they obtained the higher food rations provided for workmen or for those doing long shifts or heavy work, as has been attested by witness Ricke; moreover, they left the large concentration camps, and were no more under SS control during working hours, but in the plants they were subject to the control of foremen and skilled workmen appointed by the plants.

It is true that to avoid transportation and marching difficulties special camps were erected near the plants or working places where they were employed, and these were not accessible to the control of the plant managers nor to the control of the offices of the defendant Speer, but stood exclusively under the control of the offices in charge of the administration of the concentration camps. For the

H0186 - 0061

conditions prevailing in such camps neither the plant manager nor the offices of the defendant Speer can be held responsible if abuses occurred there. In general, as attested by the letter of the department chief Schieber of 7 May 1944 to the defendant Speer (doc. book II, page 88), the inmates preferred work in such plants to an occupation given by the administration of the concentration camp itself. And Schieber quite clearly states in his letter that for these reasons more room should be given to the employment of concentration camp inmates in order to improve their lot. But he further states that the number of concentration camp inmates employed in the armament industry amounted to 36,000 and that this figure was decreasing. Against this the defendant's assertion at his interrogation that the total number of concentration camp workers employed in the armament industry amounted to 1% of the total number of workmen employed in the whole armament industry, is calculated too high.

H0186 - 0062

Of 49 million workmen engaged in the final processing of armaments, the figure of 36,000 represents only 7 per thousand. The number of concentration camp inmates employed in the armament industry represents a very small part of the total labor employed in the final processing of armaments, that is of the total labor em loyed in the plants manufacturing finished products.

These figures show how misleading the assumption of the Prosecution is, that the employment of such prisoners in the armament industrh had resulted in an increased demand for such labrr and that this increased demand was satisfied by the sending into concentration camps of persons who under normal conditions would never have come there. The opinion that the fact of the employment of prisoners from concentration camps in the armament industry led to an increase in the number of concentration camps inmates is disproved by the already mentioned letter of Scheiber (Ex. No.6, page 88) and by his testimony. Also submitted is Ex. No. 37, doc 51. According to this, the employment of concentration camp inmated in the armament industry occurred for the first time in the autumn of 1943, and the number of prisoners employed there reached its peak with the maximum figure of 36,000 in March 1944 and from that time on not only did not increase, but on the contrary decreased. The conclusions of the Prosecution in no way bear examination. Not even the proof has been brought forward that Speer had attempted to have people sent to the concentration camps.

At his interrogation, the defendant admitted that everywhere in Germany people were afraid of being sent to a concentration camp. This dread, in the population, of concentration camps was quite justified, for it depended only on the judgement of the police authorities, led by Himmler, whether a person was sent to a concentration camp or not; further, because there was no legal authority which might have made it possible to check the charges resulting in transfer to a concentration camp, and finally, and this is the main reason, because it lay entirely within the discretion of the concentration camp authorities to decide for how long one was to be sent to a concentration camp.

The Prosecution has further asserted that Speer went on having concentration camp inmates in industry after he had obtained knowledge of

H0186 -0063

conditions prevailing in the Mauthausen camp from a visit he made there. That this was not the case is proved by the evidence of the defendant on this point. As it was only a hurried visit, the purpose of which was merely to instruct the camp administration to desist from tasks, undertaken in defiance of the prohibition wich served purely peacetime purposes and instead of this to place labor at the disposal of the armament industry, the defendant Speer could only obtain a superficial impression of the living consitions in the camp. Up to this point, his evidence may be referred to.

Moreover, through witnesses for the Prosecution, detailed reference has been made to the fact that during such visits to concentration camps by personalities of high standing, the camps were shown from the best side only, and that any signs of atrocities etc., were carefully removed so that the visitor should not get a bad impression of the camp (cf. statement of witness Blaha on 1 January 1946).

In connection with this question, we will deal with the further reproach of the Prosecution, which asserts that Speer had approved of the use of Hungarian Jews as labor for the construction of the bomb-proof airplane factores orderd by Hitler. In respect to this, reference must be made to the evidence of the witness Milch and that of the witness Franck. Milch stated that Speer, who was ill at the time, strongly opposed these constructions, but that Hitler, who demanded the undertaking of the work, gave the commission directly to Dorsch, the leader of the Organization Todt, to carry them out. So that the cotroversy between Hitler and Speer should not becomeknown to outsiders, Dorsch officially remained subordinate to Speer, but in this matter he had to deal directly with Hitler alone, and was immediately subordinate to him. In his evidence Milch further stated that thesebuilding intentions were never actually carried out. I have submitted Hitler's order to Speer of 21 April 1944 as Ex. No. 34, page 52, in my document book. This order clearly shows that Hitler shows Dorsch as being directly responsible to him, since the appointment of Speer, who was given the duty of adjusting these building tasks to the building plans under him, was of a purely formal nature. The evidence given by Field Marshal Milch is thus confirmed by this letter.

H0186 - 0064

To support the opinion of the Prosecution that the defendant Speer had contributed to sending people to concentration camps, a statement is quoted which was made by Speer at a sitting of the Central Planning Board of 10 October 1942, on the question of shirkers. In this connection, one must look at the evidence of the defendant Speer in the witness box, in which he declared that upon this statement no steps to stop this evell were taken either by the Central Planning Board nor by himself with the General Plenipotentiary for Labor Commitment. Effectively nothing was done about it. It was only in November 1943 that Sauckel issued a decree against shirkers. The term "shirker" is applied to those workers, who, in order to evade the fulfillment of their working obligations, simulate illness or stay away from work under the pretext of reasons that do not stand the test or even without any reason. at all.

It may incidentally be mentioned here that economic wargare did not neglect even this question. Efforts were made in every imagina ble way to undermine the willingness to work of the working people. By dropping leaflets and through other channels of information, advice was given to the workers as to how they could report sick; what means they were to use in order to succeed in fiegning illness at medical examinations; they were invited to work slowly, etc. At first this propaganda succeeded only in isolated cases. As, however, such isolated cases very easily have unfaboorable influence on the working discipline of the personnel as a whole, the defendant Speer discussed the possibility of police intervention. Speer did notk however, take any intiative of any kind which would have led to practical action on the part of the police. It was not until a year later that a decree was issued by the General Plenipotentiary for Labor Commitment, first making it an obligation for the employer to use disciplinary penalties; in particularly grave cases, the trustees of production could ask for court punishment. Based on this decree sentences could be pronounced providing for transfer to a worker's training camp for a term of 56 days. Only in exceptionally grave cases of infractions of the working law did the decree of the General Plenipotentiary for Labor Commitment provide for transfer to a concentration camp.

H0186 - 0065

It must be here mentioned that this decree was applicable both to national and foreign workers in the same way, for in no case were national workers to be treated differently. In the cross-examination of defendant Sauckel. the French Prosecution produced the document about a sitting of Sauckel's labor authorities at the Wartburg. At this sitting Dr. Sturm, the specialist on questions of labor law at the General Plenipotentiary for Labor Commitment, gave a lecture on the punishment of workmen, and it was thereby established that only an infinitisimal percentage of workers had to be sentenced to penal punishment.

But from this it results again that the Prosecution has brought forward no proof for the assertion that, as a consequence of Saukel's decree, concerning shirkers, the concentration camps had been filled up; so that conclusive proof is lacking that Sauckel, or respectively, the defendant Speer, contributed by any measures they took to the filling of concentration camps.

In this statement before the Central Palnning Board of 22 May 1944 (P.49 in my document book, USA Ex. 179), Speer pointed out that the escaped prisoners of war who were apprehended by the police had to be brought straight back to their work. From this remark we see the basic attitude of the defendant Speer, who did not want to see the escaped prisoners of war thrown into concentration camps but demanded that they be immediately incorporated into industry. So far the Prosecution has not been able to bring forward any proof that will stand the test for the assertion that Speer had the concentration camps filled in order to obtain labor from them.

Mr. President, perhaps now I may go into the question which you asked me at the beginning of my plea as to how I interpret paragraph 6-A of the Statute in regard to the defendant Speer, especially in regard to the terminology: "The waging of a war of aggression." I should like to say the following: The Charter, under 6-A, Cites, among other punishable actions, the execution of a war of aggression. As for the definition of a war of aggression, I need say nothing here. Professor Jarries has already done that in detail. Here it is only the term "the execution of a war of aggression" that is in question. My point of view is that a war of aggression can be waged only by the person in command. All others are only led, which

H0186 - 0066

makes a considerable difference in their participation in the war.

In the case of the defendant Speer, as a result, the waging of a war of aggression can not be applied. I should like to point out the following as well: In a session on about the 28th of February or the 1st of March, one of the judges told Justice Jackson that the prosecution had represented the point of view that the charge of a war of aggression was concluded with its outbreak. I can only share this opinion.

During the hearing of evidence I had ample opportunity to state the activities of the defendant Speer during the last phases of the war from June 1944. I can, therefore, confine myself to proving now in regard to this detailed chronological description that the entire testimony of Speer is covered almost in its entirety by testimonies of other witnesses and by documents. The written depositions of witnesses, which I refrained from reading before the court, run along entirely the same lines, although the witnesses came from different camps and expressed themselves in a completely unbaised manner.

Beginning with June 1944, the defendant Speer readily reported to Hitler on the situation of his armament production, and pointed out vigorously at the same time that the war would be lost if such decline of production were allowed to continue. This is proved by the memorandums of Speer to Hitler submitted as Speer Exhibit Nos. 14, 15, 20, 21, 22, 23, and 24. As stated by the witness General Guderian, Chief of the General Staff of the Army, (compare Question 6, page 179 of my document book Speer) Hitler defined, since the end of January 1945, any such information as high treason and subjected it to corresponding punishment. Nevertheless, as it appears also from the deposition of Guderian, (Question 9, page 179, v. Poser, question 22, page 11), Speer stated clearly time and again to Hitler as well as to Guderian his opinion about the prospects of the war.

Hitler had forbidden especially to inform third persons about the true situation of the war. Notwithstanding this, Speer informed, after the severest orders of destruction had been issued by Hitler, the Gauleiters and the Commander-in-Chief of various army groups that the war was lost

H0186 - 0067

and thus achieved that Hitler's policy of destruction was at least partly prevented. This is evident from the testimonies of witnesses Huppfauer, Kempf and von Poser.

H0186 - 0068

Hitler declared to Speer on 29.3.45 that the latter would have to take the consequences customary in such cases, if he continued to declare that the war was lost. This conversation is contained in the testimony of the witness Kempf. In spite of it Speer travelled already 2 days afterwards to Seyss-Inquart (on 1 April 1945) in order to explain also to him that the war was lost. The witness Seyss-Inquart and the witness Schwebel Interrogation 11 June 1946, and interrogation 14 June 1946, page 11482 of the German minutes stated here unanimously that this conversation with Speer of 1 April 45 occasioned the conferences of Seyss-Inquart with the Chief of the General Staff of General Eisenhower, General Smith. This led finally to the handing over of undestroyed Holland to the Allies. On 24 April 1945 Speer flew once again to Berlin which was already besieged in order to persuade Hitler that this sensless battle should be given up, as is evident fromthe testimony of the witness Poser. In his last will Hitler dismissed Speer on 29 April 45.

The American chief prosecutor, Chief Justice Jackson has therefore been obliged to confirm to the defendant Speer during his cross-examination, that he evidently was the only man who told Hitler the whole truth.

The representatives of the prosecution have produced no evidence that destructions of industries took place in Poland, the Balkans, Czechoslovakia, France, Belgium, Holland were destroyed during the German retreat.

This is in the first place a merit of the defendant Speer who prevented the destruction of the industries of these countries as ordered by Hitler, partly even through a false interpretation of existing orders. That Speer was convinced as early as in summer 1944 that these destructions should be prevented in the general European interest, is evident from the testimony of the witness von Poser. It would have been easy, by relevant execution of the orders, to cripple completely the industries of high standing of Central Europe and of the occupied Western European countries for 2-3 years and with it the entire industrial production and civilized life of these peoples, in fact to make rebuilding by own force quite impossible for years to come

The witness Seyss-Inquart has stated in his interrogation on the 11th of June of this year, that the prepared destruction of only 14 points in Holland

H0186 - 0069

would have absolutely destroyed the basis of existence of this country. The destruction of all power plants in these countries would have produced a similar effect as in 1941 the destruction by the Soviets of 2 - 3 power plants in the Donetz territory had shown. It was not until 1943 that production there could start again. Similar and still further reaching consequences had to be expected from the carrying out of Hitler's orders on the European continent.

After the success of the invasion of these occupied territories Speer gave the authorization to undertake no destructions, as is confirmed by the witnesses von Poser, Kempf, Schieber, Kehrl, Rohland, Seyss-Inquart, Hirschfeld and by Speer document 16. Kehrl for the Balkans, Schieber for Upper-Italy; Rohland for Luxemburg and Lorraine; Kempf for the Balkans, Czecho-Slovakia, Polish-Upper-Silesia, France, Belgium, Holland, Luxembourg; Seyss-Inquart for Holland, 11 June 1946, Hirschfeld for Holland; Poser for France, Belgium, Czecho-Slovakia, Upper-Italy, Hungary, the Balkans, Poland.

Immediately after the appointment of the co-defendant Doenitz as successor to Hitler, he submitted to him orders prohibiting any destruction in the still occupied territories of Norway, Czecho-Slovakia and Holland, as well as Wehrwolf activities, as is shown inthe testimony of the witnesses von Poser and Kempf.

Although Speer had no direct authority for carrying out the destruction fo industries in the occupied territories, he had to accomplish this task at his own responsibility and through his agencies within the borders of the so-called Greater German Reich. He had to keep especially busy in this connection in order to obstruct the total destruction of all real values which was obstinately demanded by Hitler. Information on this will for destruction on the part of Hitler and many of his Gauleiters is furnished in the testimonies of witnesses Guderian, Rohland, Hupfauer, von Poser, Stahl and Kempf.

The most important document in this regard is the letter of Speer to Hitler of 29 March 45 submitted as Speer Exhibit No. 24, in which Speer repeat again Hitler's remarks during the conversation on 18 March 1945. This document shows clearly that Hitler had made up his mind to destroy completely

H0186 - 0070

the foundations of the life of the German people. This document should be especially rich in information about Hitler's time for any future historian. In connection therewith follows the evidence of the General Colonel Guderian who certifies that in February 1945 Hitler

1. confused his inevitable fate with that of the German people.

2. wished by all methods to continue this senseless fight

3. ordered the reckless destruction of all things of real value.

That is Guderian on page 177, and page 179 of my document book. At the same time the demolition and evacuation orders of Hitler and Bormann which were issued the day after the conference with Speer and are of impressive clearness, have been submitted to the Tribunal as Documents under Speer Exhibit No. 25 - 28.

Already since the middle of March 1944 Speer-considering this war inevitably lost --was determined to undertake everything in order to maintain the most urgent vital necessities for the German people, as can be confirmed by the witness Rohland.

Notwithstanding the growing danger, he repeated this determination with increasing urgency to his collaborators as the witnesses Kempf, von Power and Stahl can certify for the months of July and August 1944 and the witnesses Stahl, Kempf, von Poser Rohland and Hupfauer for the critical period from February 1945 onwards. Numerous orders of Speer dealing with the preservation of Industrial plants issued between Spetember 1944 until the end of March 1945 can be submitted to the Tribunal without any gaps. They were at first partly issued without Hitler's authorisation, but until February 1945, by a clever use of Hitler's hope that these territories could be reconquered, were in part subsequently approved by him.

The testimonies of the witnesses Rohland, Kempf and von Poser, as well as Speer's numerous memoranda regarding the war situation prove that he without sharing it profited by Hitler's illusion in order to prevent these demolitions.

Since the beginning of February 1945 Hitler no longer lent his ear to any such argumentation. The introduction to his demolition orders of 19.3.45 on

H0186 - 0071

the contrary, show that he considered it necessary to oppose actively such argumentation. In false orders as those of 30 March 1945 (Speer Exhibit 29 page 81 Document Book) to all industrial plants, as well as those of 4 April 1945 for all sluices and dams, Speer gave instructions -- contradictory to the intentions of the orders submitted by Hitler -- not to undertake any industrial demolitions. This likewise is corroborated by the witnesses Kempf, Poser and Rohland.

During the month of March the executive power for the demolition of industrial plants and of other objects of value was transferred from Speer to the Gauleiters.

During this period Speer acted in open insubordination, and on trips to the danger zones he arranged for the sabotage of these orders. As for instance by clever planning he withdrew the stocks of explosives from the possession of the Gauleiters -- which was stated by the witnesses von Poser, Kempt and Rohland, and gave orders that the so-called industrial explosives should no longer be produced, as is proved by the statement of the witness Kehrl, the chief of the Office for Raw Products of Speers Ministry.

It seems important that Speer had urgently drawn Hitler's attention to the consequences which the demolitions would have for the German people, as is shown in Speer's submitted memorandum dated 15 March 1945 (Speer Exhibit 23). In this Speer, for example, has established that by the planned demolition of industrial plants and bridges, in the Ruhr for instance, the reconstruction of Germany by her own forces after this war would be made impossible.

It is without doubt mainly to Speer's credit that the industrial reconstruction of Western and Central Europe can progress already today, and that in France, Belgium and Holland according to their latest reports, production has already reached the level of the peace-time production of 1938

Speer was the Minister responsible for the means of production, i.e. the factories and their installations. Thus he sat in the transmission center through which Hitler's intentions for the carrying out of these demolitions must necessarily pass. We have noticed in this trial how in an authoritative

H0186 - 0072

system such centers are in the position to carry out on a big scale the orders of the Head of the State. It was a fortunate coincidence that at this decisive period a clear-thinking man like Speer directed this office where from the industrial demolition must be directed. But with increasing intensification Speer took measures beyond his sphere of action, in order to ease the transition for the German people and at the saem time to shorten the war. Speer thus tried to prevent the destruction of bridges. Every German knows that up to the last days of the war and to the farthest corner of theGerman Reich, bridges were destroyed in a senseless way.

Nevertheless his efforts were doubtless only a partial success. The numerous conferences, which Speer held in this connection with military commanders are testified to by the witnesses Kempf and Lieutenant Colonel von Poser. This witness was Speer's liaison officer with the army, and accompanied him on all trips to the front.

H0186-0073

These conferences were only partially successful. Finally in the middle of March 1945 the Chief of the General Staff of the Army Generaloberst Guderian and Speer tried on the latter's proposal to obtain Hitler's agreement to alter his demolition orders regarding bridges, as is confirmed by the witness Generaloberst Guderian, but without success.

Knowing that the consequences of those bridge demolitions could not be foreseen, Speer finally issued on 6 April 1945 6 orders in the name of General Winter of the Supreme Command of the Wehrmacht which should arrange for the sparing of the bridges of important railway lines in the Reich and in the entire Ruhr territory. These unauthorized orders were confirmed by the statements of the witnesses von Poser and Kemp.

Noticing at the end of January 1945, that, from a long range view, the guarantee of sufficient food supplies for the German people and the spring preparations for the harvest of 1945 in particular were endangered, Speer allowed the requests for armament and production, which were in his jurisdiction to be superseded and gave priority to the interests of food supply.

That this did not only deal with the actual food situation but merely in order to relieve the transition period after the occupation by the allied troops is proved by the statements of the witnesses Hupfauer, Kehrl, Rohland, von Poser, Riecke, Secretary of State in the Ministry of Food, Milch, Kempf and Seyss-Inquart. When Speer believed that renewed apprehensions that Hitler induced by his close collaborators in Party circles would use poison gas in the fall of 1944 and then in the spring of 1945 were justified, he opposed this determinedly as it is proved in his cross examination by the U.S. prosecutor Justice Jackson and by the testimony of the witness Brandt. Speer's statement, that out of this apprehension he had shut down the German poison gas production as early as November 1944 was confirmed by the witness Schieber, Speer at the same time established that the military authorities unanimously opposed such a plan.

Finally since the end of February 1945 the defendant Speer had tried by the planning of a conspiracy, to bring the war quickly to an end.

H0186-0074

The statements of the witnesses Stahl and vonPoser show that Speer had planned other forced measures. Chief Justice Jackson likewise has established in the course of Speer's cross examination, that the prosecution know of further plans, which were to be executed under Speer's leadership.

Speer's political attitude, apart from all these activities, is illuminated by 2 facts:

1.) In Speer's memorandum addressed to Hitler, submitted as Exhibit 1, the defendant establishes that Bormann and Goebbels marked him estranged from the Party and hostile to it, and that a continued collaboration would be impossible, should he and his collaborators be judged by Party-political measures.

2.) In their Government list of 20 July 1944 the Putschists quoted Speer as Armament Minister and as the only Minister of the Hitlerite System, as the witnesses Ohlendorf, Kent, and Stahl stated.

Would these circles have proposed Speer as Minister, if he had not been considered an honest and unpolitical expert in Germany and abroad? Is not merely the fact, that he, as one of the closest collaborators of Hitler, was chosen for this post, a further proof for the high respect which the opposition thus paid him?

Honorable Judges, let me say a few more fundamental words about the Speer case itself. When the defendant took over the office of Minister at the age of 36, his country was in a life and death struggle. He could not evade the task with which he had been charged. He devoted his entire energy to the solution of the task, which seemed almost unsolvable. The successes which he obtained there did not cloud his view to the actual condition of things. Too late he realized that Hitler was not thinking of his people, but only of himself. In his book "Mein Kampf" Hitler wrote that the government of a people always had to remain conscious of the fact that it could not plunge the people into disaster. Its duty was rather to resign at the right time, so that the people could continue to live. Naturally, such

H0186 - 0075

principles were valid to Hitler only for governments in which he had no part. For himself, however, he was of the point of view that if the German people should lose this war, they would have proved themselves the weaker ones and would no longer have any right to live. In contrast to this brutal egoism, Speer had preserved the feeling that he was the servant of his people and his nation. Without consideration for his person and without consideration for his safety, Speer acted as he considered it his duty towards his people to act. Speer had to betray Hitler, in order to remain faithful to his people. Nobody will be able to withhold his respect from the tragedy which lies in this fate.

THE PRESIDENT: I now call on Doctor von Luedinghausen, for the defendant, von Neurath.

DR. LUEDINGHAUSEN: Your Lordship, your Honors. "Never before has war impressed me as quite so abominable":

This is what Napoleon Bonaparte wrote to the Directorate in Paris in the year 1799, after the victorious capture of Jaffa - where he had ordered the shooting of 2,000 captured Turks. This statement by one of the men most outstanding in the conduct of war, stood for unqualified condemnation, not merely of war as such, but also of all means for the conduct of war considered as unavoidable and permitted at that time. The perception which this word reflects and its ethical condemnation of war were not uttered in vain. As early as the middle of the last century, morally and ethically high-minded personalities made efforts tending to ameliorate and diminate, some at least, of the horrors of war. The founding of the Red Cross in Geneva was the first result of such endeavors, casting its luminous light afar, the first fruits of Napoleon's word. But I dare to say, this word is so to speak also the actual hour which gave birth to this present trial. It, too, was caused and dictated by the aspiration, not only to circumscribe war as regards the manner in which it is waged, the independence of selection of means and actions, but beyond that to find means and ways to eliminate war as a political measure, altogether from the relations of the peoples. It strives for the same high goal, to create an International Law to govern all peoples of all States, as they live alongside and together, and to which all States and peoples who wish to rank as civilised States will submit, and by which they will be forced to abide in the same

H0186 - 0076

manner as the individual national of a State must abide by the law his State has established for the common existence of its people. And if you, your Honors, and if the entire world will learn to understand how infinitely painful it is for us Germans that it is just our State and our people who have furnished cause for the creation of such International Law by a war in which we were engaged, yet my client, the defendant von Neurath and I could not help but welcome the attempt inherent in this trial, because the highest effort during the entire official activity of my client, from his first day in office to the last, was the endeavor to avoid war and to serve peace. And I do not hesitate to emphasize this, although it is because of an entirely new principle of law that my client is facing this Court. Because for the first time in history the idea is to be carried into practice according to which this or those statesmen of a nation are to be held personally responsible and be punished for the wars of aggression caused by them, and the inhumane and cruel means therein applied. This thought, which this High Court is about to carry into practice as a principle of law, is absolutely novel in the history of International Law. But if the present Court Trial and the Charter on which it is based is to be more than a single procedure, worked out and intended for this one case - in other words for this war just ended; - if it arose not merely from the thought of vengeance because of harm and damage done to the victorious nations and is intended to atone for them, but if it really was brought forth by the will and the decision to eliminate war in itself for good, through the stipulation of the personal responsibility of the statesmen of the nations,

H0186-0077

then this constitutes a deed which the sincere conviction of every peace loving person will welcome. It furthermore contains two elements apparently suited to revolutionize all that was hertofore known in this world for handling and directing the foreign policy of States, and to raise it onto a new and undoubtedly higher ethical basis.

It has been an anciently established postulate for the policy of a statesman and his rating before history -- which has been so since the speech made famous by Pericles and since Plato's State doctrines, making it the foremost, I would almost say the only postulate -- to exert every endeavor to obtain for his people, for the State under his stewardship, the highest possible level of existence, of maintenance, and improvement of its standard of living, of its position among nations, irrespective of the means it might require. Every nation on earth includes in its history statesmen who, seen in this light, are being extolled and honored as shining examples, and who went down in history as such merely because they were successful, and without testing whether the means used by them to obtain success were in harmony or not with the ethical principles, not only of the Christian but of all high-ranking moral philosophies. To this maxim the Charter of this High Tribunal opposes a new maxim in that it stipulates that every war of aggression places culpability on the person responsible for the war, without regard for the question of success or failure in the war. However, this means nothing else but subjection to the moral law -- which rejects application of force of any kind as a means of policy -- of every state stewardship, even the most successful and the most victorious.

If, however, this is to have practical meaning and success, there follows the subjection of every State stewardship to the test and judgment by all other civilized States in the world. On that principle the Charter established by this High Tribunal would call for the testing and possible judgment of all innerpolitical measures which, in retrospect, might be seen as actions of preparation forthis war. To discuss consequences resulting from this would lead too far; this must rather be left to discussion by scholars of State Law and to further developments, and I wish therefore to confine myself to pointing to one consequence only, the consequence that the statesmen involved in

H0186 - 0078

the war of aggression -- will be subject to such judgment of a future International World Court and with it liable to punishment, even in the event of that war of aggression ending in victory. Perhaps this is the main point, reflecting the highest ethics of the stipulations and principles established in the Charter.

If I particularly stress these factors this is not done because my client or I entertain doubts that the framers of this Charter failed to be equally and fully aware of these consequences. But the fact that this new tenet of International Law is to find application for the first time in the World Forum and by the Allied Governments not through a power dictate but through a Court-procedure equipped with all reservations for objectiveness and impartiality, wherein my client and I see proof of the fact that this Court-procedure was born and is being motivated by the ideal aspiration of mankind to free it from the scourge of war.

And even if my client and I myself in no way fail to recognize the important issue in this trial as based on the Charter, manely that -- in sharp contrast to the principles of law of all democratic States, of every democratic-liberal principle of law -- it proposes to pass judgment on and inflict punishment for many actions for which at the time they were committed there undeniably did not exist a law or a precedence governing them, my client and I nevertheless are confident, because of our conviction that this High Tribunal will not base the establishment of its verdict on individual and incoherently united actions, on single bare facts, but that it will scrutinize and examine with particular care the motives and aspirations which moved each individual defendant. If then you, Your Honors, will establish as I am convinced you will, that from the first to the last day of his official activity- as Reich Foreign Minister or as Reich Protector, -- my client was moved by one desire only, all his deeds and actio s governed by one aspiration, to prevent a war and its cruelties, to maintain peace, and that the very reason for his remaining in office was to prevent through his influence war and its inhumanity, and that he did not withdraw from his post until he was forced to conclude that all his efforts were vain, and that the will and determination

H0186 - 0079

of the highest ruler of the State, Hitler, to war, were more powerful than he, -- in that case the fact of his membership and continuance of office in the Reich Government until that moment cannot possibly be construed as approval, much less as assistance and co-partnership in the planning, preparing, or waging of war, thereby placing upon him joint-responsibility for the war, or even for cruelties and atrocities committed during its course. By reasons of the very fact of the application, in International Law and in Democratic States -- an application made for the first time in this trial -- of the legal doctrine that an action already committed can subsequently be made punishable by law, results in the imperative demand that the question of the subjective guilt of the defendant -- in other words the consciousness, not only of the amorality and the presumed criminality of the deed in question -- but also the intent to commit the deed or at least to offer active assistance despite such awareness, -- be examined and answered before a verdict is arrived at. Disregard of this postulate would not only rob this trial of its high ethical importance, but would open wide the door and gate to arbitrariness, making such Court procedure appear before the world, not as a real Court within its truest and profoundest meaning, but making it a power-dictate wearing the robe of justice.

"n extraordinary responsibility is thus placed upon your shoulders, s great as has never before been placed on the shoulders of any Court in the world. Carrying out the will and the vision of the father of this trial, President Roosevelt who too early passed fr m this world, it is your task, Your Honors, to lay the first corner stone for the temple of peace of the nations of the earth. You are to build the foundation for the attainment of the ideal he envisaged, perpetual peace. On your judgment coming generations are to continue to build. You are to give the directives, according to which those who come after us must continue to aspire to this high goal. It is not a precedent you are to establish, not an individual case you are to judge and to punish the guilty men according to your judgment; but you are to lay down the fundamental principles of a new International Law which is to govern the world in the future. This alone, this task assigned to you, establishes the

H0186 - 0080

the meaning of this Tribunal, its justification and its high ethical inspiration, to which we yeild. At the same time, however, this also includes the recognition that the verdict to be established by you in regard to these defendants is not a verdict in the ordinary meaning of the word; it is not merely a judge's sentence pronounced on behalf of individual defendants and their deeds, but it is the new fundamental law itself, the source from which all future Courts are to draw in accordance with which your verdict is to be established.

It is therefore your task, Your Honours, to interpret the provisions of the Charter according to their principle, and to establish in practice and for all time to come, the rules and principles of the Charter. The responsibility which you thereby assume before history gives you two questions to answer, which answer is all the more complicated because the legal concept of conspiracy incorporated in the Charter and forming the legal foundation of the indictment is a concept foreign not only to the majority of peoples, especially the European peoples, but also because in one or the other country it owes its existence to its previous application to the combat against common crimes and offenses against the legal provisions governing domestic affairs and those alone. The postulate necessarily follows that the modus of interpretation and applicati n of this legal concept in International Law can and must never be the same as employed in the fight against common bands of gangsters, guilty of a breach of the social order of a particular country and of the laws promulgated for its protection. The latter ordinarily involves individuals of a more or less amoral disposition, who act for reasons of selfishness, lust for money or other unethical instincts, placing themselves outside the existing social order. In the last analysis, however, and particularly when wars of aggression are involved, International Law does not deal with individual statesmen but much rather with whole peoples. The age of absolutism where the will of the ruler determined alone the destiny and acts of a people has definitely passed. In this age it may be said that no avowed dictator no omnipotent despot who can rule without or against the will, or at least

H0186-0081

the tacit approval of the nation, at least its majority, is conceivable. And so -- it is necessary to make this known once to the world -- unvisible behind the defendants, there sits also in the prisoners' dock our poor, beaten and tortured German people, because it placed upon a pedestal and selected as leader a man who led it to its doom. From this follows of necessity the inescapable demand that, contrary to the concept of a conspiracy applied in regard to ordinary criminals, application of the concept of conspiracy applied in International Law must firstly proceed by investigating and examining how it came about -- how it could come about -- that a people ranking high intellectually, a people who gave so much to the world in terms of gifts of culture and of mind as the German people did -- that it could ahil a man such as Hitler, following him into the bloodiest of all

H0186 - 0082

wars, giving him its last and best. Not until you, your Honors, have incorporated this in the field of your considerations and examined this question, will you be able to establish a just verdict in regard to the individual defendants themselves, with due consideration for their dissimilarity, a judgment which will stand the test of history. Because of such reasoning and not merely by reason of my right as defense counsel of the defendant Freiherr von Neurath, but also because of my duty as a German, I deemed it necessary to explain in more outline the fact of Nazi domination which the world outside of Germany cannot grasp; to make you visualize how it happened as a result of the effects of the Versailles Treaty and finally, because of the manner of its application, how it was bound to happen, true to historical necessity.

In view of the short amount of time made available to me through decision of the Tribunal, I must refrain from reading that part of my final pleading, and express my definite hope that the Tribunal will go to the trouble of subsequently reading it itself and that it will consider its arguments when establishing its verdict. I now continue with page 44 of my final pleading, and should first of all like to give you a brief description of the personality and of the thoughts and feelings of that man who is today before you as prisoner.

THE PRESIDENT: Dr. von Luedinghausen, probably that would be a convenient time to break off.

(A recess was taken.)

Born as a scion of an old family which gave its small country of Wuerttemberg so many faithful high government officials, the defendant von Neurath grew up with a simple and strict education in a parental home filled not only with a real Christian spirit and true love for mankind, but also with a flourishing, devoted love for his German people and Fatherland. From his tenderest age and during his entire life his thoughts and actions had implanted in him the desire and will, the holy duty, to place all his powers, all his ability, all his gifts and capacities at the service of the welfare of his people; to subordinate and even sacrifice all his personal interests to this. But, and this must certainly be emphasized in this place, aside from this aspiration there was alive in him and woven into his being to an equally strong

H0186 - 0083

extent a deep religious feeling, love of the truth and love of mankind that made him from the beginning adverse to the use of any form of violence, not only in his private life, in his relations with his follow-men, but which ruled rather to the same extent his entire official activity, even after the Treaty of Versailles. His acts bore the stamp of this feeling and it became the law governing his official dealings as representative of the Reich in other countries, as well as Foreign Minister and lastly as Reich Protector of Moravia and Bohemia.

Not only by his conciliating amiability, his commanding appearance and demeanor, so understandable in a man of his origin and education, but also primarily through the love of peace and sincerity which permeated all his actions as a diplomat and statesman he won the unlimited and sincere respect and sympathy of all people he came into contact with the world over, even of his political opponents. As unequivocal proof of this fact, the truth of which, your Honors, may be confirmed by your own diplomats, it will suffice to refer to the fact that, as you know from the sworn affidavit of my client, no less persons than King George V and King Edward VIII of England received the defendant in private audiences upon the occasions of his presence in London in 1933 and 1935; that the British Government in the summer of 1937 and again in 1938, when he was no longer Foreign Minister, invited him to visit England for political discussions, and lastly that on his 65th birthday on 2 February 1938 the entire diplomatic corps called on him to congratulate him and to express through the then dean, Monsignore Orsenigo, its thanks and its appreciation for the reasonable and understanding manner in which he always discharged all his duties. Do you, your Honors, credit your own diplomats and statesmen with so little knowledge of human nature, so little experience and knowledge of the world that in the course of the defendant's 6 years activity they would not have found out, if the assertion of the Prosecution were true, that Herr von Neurath had knowingly let himself and his good reputation be used as a covering shield by the Nazis, and that all his statements and assurances as Foreign Minister were mere camouflage, that is to say, a deliberate deceiving of the whole world?

In this connection, it may well be pointed out as quite obvious that such

H0186 - 0084

old and experienced democracies as England, America, France, as well as the Vatican, had delegated to the then very important post of Ambassador in Berlin their cleverest and most experienced diplomats. And I am tempted to assume that the Prosecution possibly did not realize quite clearly what a dubious compliment it paid to its own diplomats by its assertion about the defendant, while it produces in proof of said assertion only the highly fantastic report of the American Consul Messersmith. I am moreover unshakably convinced that you, your Honors, based on the very reason of your long judicial experience, have far too much

H0186 - 0085

knowledge of human nature not to see at first glance that my client by his entire personality is absolutely incapable of such a perfidious and lying way of acting, let alone capable of play-acting to such an extent that for six long years he could have fooled the ablest and most experienced diplomats in the entire world. A man who for 60 years has led an honorable and absolutely decent life, like the defendant, would never in the world at the end of such a life had lent himself for such a disavowal and negation of all that he had so far held highest. That would be contrary to anybody's personal experience.

And on the same level stands the Prosecution's assertion that the defendant von Neurath, by joining and remaining in Hitler's cabinet serves as a fifth columnist in the conservative circles of Germany, for the express purpose of winning them over to National Socialism. This slandering of the defendant, which moreover was brought forward without any attempt at justification, is contradicted by the sworn statements of all witnesses and the affidavits submitted, which unanimously tend to prove that the resignation of the defendant from the office of foreign minister was viewed in just these circles with the greatest dismay and concern, because these circles considered that this withdrawal of the defendant from the government was in itself a sign that from then on his pronounced peace policy would be replaced by another, more belligerent, tendency in foreign policy, which was quite rightly considered as a national calamity. For, like everybody else, they shared the conviction of Reich President von Hindenburg, that Mr. von Neurath was the exponent of the peaceful foreign policy of the Reich and the guarantee for a consistent continuation of this peace policy, and was against any possible, undesired aggressive experiments by Hitler and the Nazi party and that the defendant should remain in the Cabinet as foreign Minister when Hitler was called to the Reich Chancellery.

This fact is confirmed beyond doubt by the sworn statements of all the witnesses heard, as well as by the carbon copy submitted by me of the letter of the witness Dr. Koepke 2 June 1932 to Ambassador Ruemelin, Doc. book I, No. 8, and the affidavit of Baroness Ritter, document book I No. 3. But the latter proves also at the same time how unwillingly and after how long a struggle the defendant finally decided to accept this call and

H0186 - 0086

therefore supports the defendant's own sworn statement that he only decided to do so after the Reich President, whom he so highly venerated, appealed to his love of country and reminded him of the promise he had made two years before not to leave him, the Reich President, in the lurch whenever he needed him.

There is certainly no need for further proof for the utter groundlessness and inaccuracy of the further assertion of the Prosecution, also submitt without proof, that the defendant had used his single position, his reputatio his connections and his influence to lift Hitler and the Nazi Party into the saddle, and to help them to secure supreme power in the Reich. Therefore I hardly need to refer again to the statements of the defendant Goering and other witnesses, particularly Dr. Koepke, from which it appears beyond doubt that at the time there were absolutely no relations between Hitler and the Nazis and the defendant, and therefore even less could the defendant have taken any part in the negotiations which took place before Hitler's call to the chancellorship.

Love of his country, deepest concern over the weal and woe of his people and his promise not to leave Reich President von Hindenburg in the lurch in this time, of need -- these were the only reasons which moved this man to leave the post of Ambassador in London he had come to like so much, to assume at that critical and fateful hour the heavy charge of Foreign Minister of the Reich, and the task assigned him as such by the President of the Reich to continue the guidance of the foreign policy of the Reich in peaceful ways, even eventually against the will of Hitler.

The defendant von Neurath can claim fully and rightly that he carried this heavy task at all times, even after the death of Reich President von Hindenburg, with all his strength and with the pledging of the full force of his personality, up to the time he was forced to admit that this task was beyond his strength, that Hitler no longer let himself be influenced by him, but had decided to pursue a line of foreign policy along which the defendant, owing to his inmost convictions and his personal point of view, could not follow.

H0186 - 0087

Up to 5 November 1937, the date of the famous speech of Hitler to the Commanders of the various branches of the Wehrmacht, the defendant von Neurath remained at his post, in the most faithful performance of his promise to the Reich President von Hindenburg, even after the death of the latter. Out of this faithfulness to the dead Reich President, he has assumed the odium in many cases concerning Hitler's home politics of having been compelled as a member of the Reich Cabinet, to allow in silence things to take place which were contrary to his own convictions, did not agree with his views and were in direct contradiction to them. It was not in his power to prevent them. So he was forced to be satisfied with trying as far as was possible to mitigate their effects and consequences, as you could see from the Affidavit of Provincial Bishop Dr. Wurm, document book I, No. 1, and the statements of the other witnesses heard in this connection.

The reproach of the Prosecution that he did not make such cases an excuse to lay down his office of Minister, but that through his remaining in office he had consciously approved and abetted, is entirely irrelevant. The first law governing his action was the carrying out of the duty assigned him by President von Hindenburg, to secure the continuance of the Reich's peaceful foreign policy. He would have considered himself false to his word if he had resigned his post of Foreign Minister before this was accomplished or before there was no possibility of its accomplishment. What person thinking objectively could bring himself to reproach him regarding this or even, as does the Prosecution, identify him with the Nazis.

But this attitude of the defendant, however, is the only reason why he did not refuse, as did the Minister Eltz von Ruebenach, his nomination to the rank of Honorary Gruppenfuehrer of the SS in September 1937 and the presentation by Hitler of the Party Badge in gold at the Cabinet Session of 30 January 1937, which facts are made a reproach by the Prosecution into a reproof and a proof of his alleged National-Socialist sentiments. For as the statement of the defendant Goering concerning the latter, such a refusal by the defendant von Neurath, as was the case with Eltz von Ruebenach, would have been resented by Hitler as an act of rudeness which would without any hesitation have been answered by the immediate dismissal of the defendant.

H0186 - 0088

But it was just this that the defendant wished to avoid, for at that time he was still in a position to carry out to the full extent the task assigned him by the President of the Reich -- to be the guarantor of peace in the foreign policy of the Reich, because he was fully justified in his convicti that his influence over Hitler was still strong enough to ensure his agree with the peace policy he was then fostering.

The evidence submitted proves beyond doubt that in both cases it was not a question of actual membership of the SS and the Party, but in the fir case it was only a matter of uniform, an external vanity of Hitler in regard to the men of his retinue during the impending visit from Mussolini; and secondly that it was a matter of a visible recognition for the services rendered by the defendant as Foreign Minister, which at the same time implied a proof of the unlimited agreement of Hitler with the peaceful foreign poli followed by the defendant; in other words, an entirely normal awarding of decorations as is practised in every State.

The conferring of decorations in the ordinary sense was not yet poss because at that time they did not yet exist in the Third Reich. That the defendant in both cases nevertheless expressed at once that under no circu tances did he wish to prove his entry or admission into the SS or the Party by accepting this investiture intended by Hitler as a mark of honor has been proved by the Affidavit of the defendant.

H0186 - 0089

Moreover, he never took the oath required to become a member of the SS; he never exercised even the slightest activity in the SS and wore the SS uniform only twice inhis life at Hitler's explicit request. This has also been confirmed by his Affidavit. Both cases actually concerned a personal sacrifice of the defendant to thepromise which he had given to Hindenburg.

If the Prosecution consequently believes it must infer a National Socialist conviction, the defendant's agreement with Hitler's ideas and his entire governmental system from both these events, it is altogether off the track.

And the converring of the Order of the Eagle supports the Prosecution's assertion even less. For this Order was not conferred on him as well as on the defendant Ribbentrop as a personal distinctions for services rendered, but it was merely valid for the position of the Reich Minister of Foreign Affairs and for that of the Reich Protector as such; this was done in order to give this Order, which was intended to be conferred on foreign personalities only, a special significance in the eyes of people abroad, which is even own by the fact that it had to be returned when he left.

The presentation of evidence, through the affidavits of all the witnesses examined in this connection, unequivocally resulted in the fact that the defendant's attitude towards the National Socialist system and its maxims were negative from the beginning to the end, and that therefore certain Party circles continually bore him ill-will and opposed him. For these circles know quite well that the defendant von Neurath, as is proved by his own statement and by those of the witnesses Dr. Koepcke and Dr. Diekhoff, energetically and successfully opposed to the last day, all attempts to introduce members of the Party as officials into the Minis of Foreign Affairs, and in so doing open it up to Nazi influences; and that in spite of various intrigues he could not be dissuaded from definite peace policy. The defendant also took upon his own shoulders this enmity and these intrigues from his inviolable sense of responsibility and his patriotism, endeavouring ly to steer German Foreign policy into these channels, which were alone the right ones according to his convictions, formed by long years of most successful diplomatic activity.

H0186 - 0090

He was fully convinced that when he resigned his office it meant the collapse of thelast bulwark against the infiltration of members of the Party and of the Nazi spirit into the Reich Ministry of Foreign Affairs; it also meant that the danger of the renunciation of the peace policy embodied in them became threatening, as happened immediately on his resignation on 4 February 1938.

It was therefore for the defendant one of the most grievous, perhaps the most grievous disillusionment in his official life, when he was forced to recognize by Hitler's speech on the ominous day of 5 November 1937 that all his efforts, his entire struggle, all his personal sacrifices in the last 5 years appared to be in vain and that his influence with Hitler was broken; that the latter had decided to abandon himand the policy of peace and agreement advocated by him; and , if the occasion arose, to make use of military means in order to carry out his more than Utopian plans and intentions set forth in this speech. The acknowledgement struck him like lightning from a clear sky, since up to then nothing had intimated that Hitler might no longer agree on the peace policy advocated by the defendant. The heart-attack which he had the next day may testify to the fact how seriously he felt this blow, which seemed to shatter all his hopes, all his efforts to protect Germany from the dangers of this foreign policy, the military entanglements and a possible, if not probable, catastrophe.

But from his consciousness of responsibility, his burning scorn regarding the future of his people, before drawing upon himself the last self-evident consequences and resigning, he considered it his duty to try onceagain by very detailed and serious conversations, to dissuade Hitler from persevering in his fatal plans and intentions. Yet, having to recognize from this conversation, that Hitler's decisions was unalterable, he did not hesitate for one instant to tell Hitler that he had decided under no circumstances to take part in this pernacious policy, and that for such a foreign policy Hitler must find another Foreign Minister. Hitler accepted his resignation by his letter of 4 February 1938.

H0186 - 0091

I ask you, Gentlemen, is there a more unequivocal and clearer proof, than this resignation for the absolute inaccuracy, the entire instability of the charges made against my client at this trial of having assisted or wished to assist by his foreign policy in the planning and the preparation of wars of aggression which took place one and one half years later? Is there a more unequivocal and clearer proof of the absurdity of the application of the principles of Conspiracy to theacts anddeeds of statesmen and in particular, of the defendant? Finally, is there a more unequivocal and clearer proof of the absurdity of a retrospective judgment of the policy of the States, such as they constitute here one of the main bases of the whole prosecution?

All of you, Gentlemen, who are here to do justice, know from your own activity and experience at least as well as I do, how

H0186 - 0092

dangerous conclusions a posteriori are regarding the actions of a man regarding the thoughts, views and deeds of this man at a time going back several years. Tempora mutantur et nos in illis. Each of us has surely, more than once in his life, experienced the truth of this sentence. Convictions and views, intentions and resolutions, which we have held and carried out at a certain time, have in the course of years become changed and altered, partly because of the transformation of one's own personality, partly because of exterior circumstances, or change of conditions. Does one really wish to expound this thesis and draw conclusion, retrospectively, that the former views, assertions and actions were only camouflage, and that the person already intended to do and was determined to do, what he did years later under quite different circumstances? Why should you demand a different standard of a politician, a statesman? He also is only a man and is subject to the same changes of ideas, opinions and intentions, as any one else. He is even more subject to exterior influences, exterior conditions so certain imponderable circumstances than the ordinary man. Just one example for this: What would you say to a man who would earnestly dare to assert that Napoleon Bonaparte, when he went to Paris during the great Revolution, or later on when taking over the supreme command of the French armies in Northern Italy, already had the idea or even the plan or the intention, of making himself in 1804 Emperor of the French and of marching on Moscow in 1812? I believe whoever adopted this attitude would stand alone in the world. And an able dialectician with more or less apparent logic and right could still base this opinion on the historical development of events, like the Prosecution with regard to their opinion that Hitler, at the time of his assumption of power, yes, already with the presentation of the Party program in 1920, had not only the intention but even the plan ready for conducting his later wars of aggression, and everything which Hitler and the Nazis and/or his collaborators did, from the very moment of the assumption of power, both in domestic and foreign politics, was the conscious

H0186 - 0093

preparation for those wars of aggression.

Your Honors, I believe whoever follows the Prosecution and its principle, which still stands on a very weak basis, and its retrospective consideration of things, esteems too highly probably not only the spiritual, but also the statesmanlike abilities, not only of his satellites, but also of Hitler himself. Because, after all, it is in any case already evidence of a certain mental limitation, if a person, and particularly a statesman, founds his policy on the basis, as Hitler indisputably did, that the governments and statesmen of the remaining States would again and again let themselves be fooled and bluffed, that they would again and again stand for actions which they considered to be violations of treaties, and that they would watch quietly until Hitler believed himself to be so far as to be able now to attack almost the whole world by force of arms. And is it not all the more proof of a mental limitation, if a statesman in this way underestimates the abilities and cleverness, but also the power instruments of his opponents as Hitler has done? In addition to all this, however, there is something which must not be underestimated either; that is the violence of the sudden transition of the thoughts and the decisions resulting therefrom which was a trait of Hitler. I do not consider it necessary to have to give you any further evidence thereof, as they are generally well-known. Hitler, however, was also a man who did not stand for any argument, or any resistance, and who, when he encountered such and not obstacles which he could not remove through an emphatic word, changed his plans and intentions like lightning and let himself be led to decisions which were frequently just the opposite from what he had wanted, planned and done previously.

All this speaks against the intention of the planning and the preparation of wars at the time of the seizure of power, and even already in previous years which the Prosecution has ascribed to Hitler. The impossibility of this charge is yet underlined, if the following is considered: As to this Hitler has not only indisputably testified in public speeches, addresses and diplomatic notes

H0186 - 0094

on several occasions from the day of the seizure of power until 1937, as can be seen from documents presented by me, but he has also made positive suggestions for the practical execution of the limitation of armament of all States, therefore also that of Germany, from which it can be indisputably seen, that with regard to the German Armed Forces and its strength in relationship to the armament of the Western Powers, he declared himself satisfied with a relationship, which from the very beginning excluded any aggressive war against the other States. And now just suppose that one of these offers of Hitler had been accepted by the remaining States, then the war of aggression which Hitler supposedly had been planning and preparing for years would never have been possible. All efforts, work, and expenses in connection with it would have been in vain. Or do you perhaps consider it probable that Hitler looked ahead and figured that his offers would be refused, and that he only made them in this realization? Then he would really be an almost demoniacal genius, a prophetic seer of the first rank. Do you really wish to presume this and to affirm from it the claim of the Prosecution of the planning of the aggressive war in the year 1939 already a long time before the seizure of power? And even if you should answer this question in the affirmative for the person of Hitler, do you also ascribe such a gift of second sight to his collaborators, his servants, yes even all Party members? To ask this question is to answer it in the negative. With this question alone also falls the whole painfully constructed and artificial construction of the motivation of the Prosecution. And along with it falls also the classification of the whole charge, and in particular the co-responsibility of all collaborators of Hitler generally under the conception of the conspiracy, at least until the period of time when it could be recognized by the most extensive circles of his followers that Hitler finally wanted war and had decided on it. Simultaneously with this, however, the unvarying corrections of the postulate advanced by me at the beginning of my statements, after examining the subjective co-guilt of every single defendant, after the refusal

H0186 - 0095

of the co-responsibility of each individual only from the fact of his participation in the actions which are considered as preparation for a war of aggression by the Prosecution at any period of time, simply without examination and investigation of his knowledge of Hitler's aims and intentions, becomes evident.

H0186 - 0096

To waive and disregard this postulate, as the Prosecution does, would be to contradict every sense of justice, the most primitive as well the most highly developed, in every nation on earth. The "summum jus" sought in this trial would become a "summa injuria".

The best evidence of the truth of this assertion is personified by the defendant von Neurath himself. Is it not pure folly, is it not "summa injuri to accuse this man of connivence in planning and preparing wars of aggressio this man who deemed it his exclusive duty, a duty to which he has made many a personal sacrifice, to prevent every form of entanglement involving war; and who, the moment he realized that the task was beyond him, forthwith regisned his function and demanded his dismissal. The Prosecution obviously feel this themselves, otherwise they would not have brought, as evidence of the defendant's alleged joint culpability, his presence at Hitler's conference on the 5 November 1937, wittingly omitting however, that it was this conference and Hitler's deviation from a peace to a war policy which determined the defendant to refuse further collaboration and thereby make it clear that he has never concurred in the past and is not prepared to concur in the future in, or approve of, the planning, preparation or waging of a war of aggression. Thus, every charge of guilt make in the Indictment against defendant von Neurath is originally void, once and for all. For should he be further accused of having broken international treaties while responsible for the conduct of German foreign policy, it must be pointed out, in answer, that according to the clear wording of the Charter, the breach of international treaties does not constitute a punishable crime in itself, and becomes a punishable crime only when it serves the purpose of preparation for wars of aggression. If such a breach of treaty serves this purpose, it must be intended to do so by its author, or at least its author must have conscience of the fact. That defendant v. Neurath had no such intention nor indeed the faintest conscience of the above implication is quite clearly proved by his resignation from the office of Foreign Minister. But I shall moreover demonstrate to you that even the charge of violation or breach of international treaties is without foundation.

When, on the 2 June 1932, defendant von Neurath took over the Foreign Office at Hindenburg's request, there were two questions that far surpassed

H0186 - 0097

in importance every other European problem and awaited an urgent solution; they were the problem of the German Reparations and the problem of the disarmament of the victor Powers and of German equality of rights, a factor which was inseparable from it. The first question, the defendant and the then Reich Chancellor von Papen managed to conduct towards a satisfactory solution at the Conference held by the Powers in Lausanne on the10 June 1932, a few days after the defendant's assumption of office. At the closing session of the Conference on the 9 July 1932, Germany was acquitted of the financial servitude established by the Treaty of Versailles against a single final payment of 3 milliard marks. The Young Plan was obsolete, and only Germany's obligations deriving from the loans granted her remained in force. Thus came for Germany the political achievement that Part VIII of the Treaty of Versailles in which the Reparation obligations were contained in virtue of article 232, became obsolete. The first breach was made. Matters differed as regards the disarmament problem. This arose from the obligation for disarmament imposed on Germany according to Part V of the Treaty of Versailles which, I presume, is well known. In case of its fulfilment, the preamble to this part likewise prescribed disarmament for the highly-armed victor nations in reciprocity. Germany had disarmed: it had already fully met its obligations in 1927, an uncontested fact which the League of Nations also had expressly recognized. This was the basis for Germany's request for reciprocal compliance by the other partners to the Treaty, as provided for in the Preamble to Part V. And Germany had announced its request for disarmament by the highly-armed States and in conjunction therewith recognition of her equality of rights a considerable time before the defendant took office. However, during the so-called Disarmament Conference the negotiations not only had made no progress by the time the defendant took over the Foreign Office, but just at that time, the summer of 1932, they had become considerably more difficult. In view of the short time allotted for my disposal, I again refer for details to the German Memorandum of 29 August 1932 (my document book II, No.40) and to my client's interview of 6 September 1932 with a representative of the Wolff Telegraph Office, to be found in the same document book under No. 41. Lastly, I should like to refer

H0186-0098

to the defendant's declaration of 30 September 1932 before the German Press submitted to the Tribunal under [illegible] 45, my document book II.

These declarations all of which were made preparatory to the resumption of negotiations by the Disarmament Conference on 16 October 1932, and in order to demonstrate the seriousness of the situation to the world and to the Western Powers -- prove clearly and unequivocally the great, fundamental tendency of the defendant's ideas, his trend of thought and intentions as a human being, as a diplomat and as Foreign Minister, which dominated his entire policy from the beginning until his resignation, and which can be summarized in the statement : to avoid and prevent the settling of differences through force of arms; to realize all goals and tasks of German foreign policy by peaceful means only; to reject war as a means of policy; in a word, to strengthen and safeguard peace among the nations.

It is the same tendency which Mr. Francois Poncet, the former French Ambassador to Berlin so succinctly referred to as a characteristic of the defendant in his letter -- which [illegible] mitted to the Tribunal as No. 162 of my document book V -- and which was unanimously confirmed by all witnesses and affidavits.

While the opening of negotiations at the Disarmament Conference pressed what really might be termed an affront to Germany, which caused the head of the German Delegation to declare that under such conditions it would not be possible for him to continue to attend the negotiations, the Western Powers in the end could not close their minds to the ethics of a policy inspired by such tendencies, and, following a suggestion by the British Government, on 11 December 1932 the conclusion of the known Five-Power Agreement was brought about (see my document book II, No. 47 a) in which England, France and Italy, with the admission of the United States of America recognized Germany's acknowledged equality of rights. On 14 December 1932 the Main Committee of the Disarmament Conference expressed its pleasure in taking cognizance of this agreement, and the German Delegate expressed his readiness to resume participation in the deliberation of the conference, stressing also that the equality recognized on 11 December 1932 in regard to Germany was the condition sine qua non for this continued participation by Germany.

It seemed that a great stop forward had thus been made in the path leading t an understanding on the question of disarmament.

However, things were to take a different turn : Immediately following the opening of the conference meeting, again in Geneva on 2 February 1933, s rious clashes occurred between the German and the French Delegation, in the course of which M. Paul Boncour, the French Delegate, even went so far as to declare the Five Power Agreement of 11 December 1932 legally invalid because involved five powers only. To the astonishment not only of Germany, the cau for these increasingly acute differences was the fundamental change in Franc attitude as regards the basic question of the entire armaments problem as la down in the French Plan of 14 November 1932 as a basis for these negotiation

Contrary to the stipulations of the Treaty of Versailles and its own a titude heretofore, France suddenly took the position in this plan that armie made of professional soldiers with a long period of service were aggressive in character and, consequently, meant a threat to peace and that only armies with a short period of service were defensive in character.

I regret that for a lack of time I must desist not only from reverting at greater length to the details of the French plan, but also to the sequenc of the differences which became constantly more critical between Germany and the other Powers. Rather I must presume that they are known and confine myself to stressing that the new French thesis, which the Disarmament Confer adopted as its own, was clearly and unequivocally directed against Germany the Reichswehr as it had come into being in accordance with the disarmament visions of the Treaty of Versailles, a thesis which, if it was to be carried into effect, would have required the transformation of the Reichswehr into a militia army with a short period of service, thus signifying a still furth reduction in its armament, inadequate as it already was for an effective pro tection against attack. The establishment of this thesis, however, also proved clearly that France was unwilling to disarm, which was also shown by statements of the French representative himself.

This new plan of France just as also her attitude particualrly in the question of the ration in the reciprocal reduction of the individual armies, was merely a new expression of her old thesis, first security, then disar-

H0186-0099

mament, which brought about the failure of not only the previous negotiations but also that of a new plan of mediation the so-called Mac Donald plan, proposed by England to prevent the threatening break-down of negotiations,

Germany's reference to consideration for her own security and her deman for general disarmament as a result of the right to equality by reason of recognition accorded her on 11 December 1932, were received by the other parties as presumptive; indication being given that should negotiations fail responsibility would rest with her.

In the interest of the clarification of these things and of the presentation of the increasing gravity of the whole situation before world publicity my client felt it necessary to publish, in the well known Geneva periodical "Voelkerbund", on 11 May 1933 -- document book II No. 51 -- an article in which he discussed the result which the conferance had so far achieved, described the German attitude in detail, and finally established that the German demand for the practical realization of the equality of rights of Germany by disarmament of the havily armed countries was wrecked by the lack of will of those countries to disarm, and that therefore Germany, in the interest of her own security, was forced to start completing her armament, should the general limitation and disarmament within the frame work of the English Mac Donald plan not satisfy her justified demands for security.

This conclusion was wholly justified in view of the entire foreign political situation at that time. These aggravated events which had intensified t crisis at the Disarmament Conference were only a small part, so to speak, of the expression of the international tension which prevailed since Hitler's assumption of power. Domestic events occuring in Germany were first observed abroad with astonishment, but also with a certain lack of comprehension.

Soon after Hitler had assumed power, on 30 January 1933, an opinion was formed abroad - the discussion of which would lead too far here - about the so-called German Revolution, which made it appear a European danger not only to France and her allies but also to Great Britain as well. The fear of such a danger affected the attitude of the Western Powers at the Disarmament Conference to an ever increasing degree, where Germany's completel logical and consistent point of view was regarded as provocation. But these worries of theirs, their insecurity in the face of the new Germany, led to even much more extensive measures and threats.

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H0186-0101

With England's consent France began military preparations in the first days of May 1933, placing the border fortifications -- which had already been provided with increased garrisons during the winter -- in a state of alarm alerting the large camps in Lorraine, the deployment area of her army of the Rhine, and carrying out a large trial mobilization between Belfort, Muehlhausen and St. Ludwig, at which the Chief of the French General Staff, General Weygand, appeared in person. And at the same time the French Foreign Minister Paul Boncour, ostentatiously declared in his speech on 12 May 1933 before the French Senate that, in viewof the revolutionary explosions in Germany, Italy would have to be kept firmly among the group of Western Powers; and, in response to Germany's attitude at the Disarmament Conference, he added that Germany must adhere strictly to the Treaty of Versailles, if she wanted to keep the Reichswehr. And these words of the French Minister, which could only be understood as a threat, were still further emphasized and confirmed by similar statements of the British

H0186-0102

War Minister Hailshan and the otherwise so pacifist-minded Lord Cecil, in the English House of Commons; the latter even encouraged France to carry out further military operations. The situation was so strained that Europe seemed to be standing directly on the brink of a new war.

This increasing gravity of the situation, this obvious crisis which was leading Europe close to disaster is one of the basic reasons for the entire subsequent policy of the defendant von Neurath during the following years. Therefore, the question must be examined as briefly as possible, to see what consequences it was bound to have and did have, for German foreign policy, from a German point of view. One thing is undeniably clear: In the spring of 1933 Germany was in no condition whatsoever to fight a war; it would have been complete madness, a sheer desire for self-destruction, to fight a war against the armies of France and her allies, which counted millions of men and were excellently equipped with the latest weapons of attack, with the small Reichswehr of one hundred thousand men which had at its disposal no motorized weapons of attack whatsoever, no tanks, no heavy artillery, no military airplanes.

Fear of an imminent warlike attack on the part of Germany could, therefore, from the point of view of the Western Powers, under no circumstances be the reason for their position and attitude. The one plausible reason could lie only in the attitude of the Western Powers in regard to the question of disarmament as such, that is, in their unwillingness to carry it out, to continue to discriminate against Germany, to continue to refuse her the realization of her equality of rights and to continue to keep her down.

In this alone, for the leaderof German foreign policy, lay the reason for the final proposals of France as well as England, in the Disarmament Conference, which were unacceptable to Germany for reasons of justice as well as for reasons of her own security and her national honor. Because even in spite of Germany's equality, which was recognized by the Western Powers, in the Five-Power Declaration, the French plan of 14 November 1932, as well as also the English plan of 16 March 1933, the Mac Donald plan, and the resolutions ofthe Disarmament Conference included therein, lacked any practical realization of equality, even from the most objective standpoint.

H0186-0103

What justly and objectively thinking person can and wishes to reproach the German State leadership, if it drew the conclusions from all this, and recognized that this behavious of the Western powers contained not only a violation of existing treaties, and also of the Treaty of Versailles with regard to dis rmament, but also the will of the Western powers to prevent Germany from maintaining her demands, justified by treaty, by force of arms if necessary, and furthermore to keep her as a second-rate State, and also to refuse her the security guaranteed to her also in the Treaty of Versailles.

Can you, your Honors, reproach a State leadership which was aware of its responsibility towards it s people, if this realization from now on had to be decisive for the continued direction of foreign policy? Because the highest duty of every State leadership, which is aware of its responsibility in foreign policy, is the securing and maintenance of the existence and the independence of its State, the regaining of a respected and free position in the Council of Nations. A statesman who neglects this duty sins against his own people. This realization should carry all the more weight because, on the part of Germany, nothing had happened which might have been interpreted as a threat against the Western Powers. On the contrary Hitler, in his first program speech, in a Reichstag still elected in accordance with Democratic principles, had emphatically declared on 23 March 1933, punctuated by unanimous applause, his will for peace; particulrly emphasizing this with regard to France, and he confessed himself prepared for peaceful collaboration with the remaining nations of the earth, but emphasized also that as a prerequisite for this he considered the final removal of the discrimination against Germany, the division of the nations into victors and vanquished, to be necessary.

To these declarations of his, however, not the slightest attentionwas paid by the Western Powers, although they corresponded throughout with the given conditions and contained nothing lessthan a threat. Unfortunately, the: were unable toeffect a change in the attitude of the Western Powers, and to prevent an acceleration of the crisis.

A discernible relaxation only took place when Hitler, under the influence of the defendant von Neurath, at the climax of the crisis, repeated once more to the world, with the greatest emphasis, his and the German people's will for

H0186-0104

peace in his great so-called peace-address before the Reichstag on 17 May 1933 -- it is in excerpt form in my Document Book II No. 52-- and expressed his conviction that, ashe declared literally, no newEuropean war would be in the position to replace

H0186-0105

the unsatisfactory conditions of today by something better; the breaking out of such an insanity, ashe described the war, would be bound to lead to the collapse of the present social and State order.

This speech of Hitler, whose honesty and sincerity cannot be denied according to the evidence, and whose power of conviction also proved irresistible to the Western Powers, effected a general relaxation of the situation, the danger of a new international war was averted, and the world took a deep breath. This, however, also marked the end of the isolation and the loneliness of Germany, which caused her inner change and every kind of revolution, and German foreign policy took the opportunity gladly and with sincere will for active collaboration in the political state gamble, which was offered to her by the suggestion of Mussolini to unite the great Powers, England, France, Italy and Germany in a so-called Four Power Pact. This treaty, which was signed on 8 June 1933 in Rome and which was signed in the middle of June 1933 also by Germany, and which in its preamble also referred expressly to the Five-Power Agreement of 11 December 1932, was to place the participating Powers in such a position, that, if further negotiations in a larger circle, as for example in the Disarmament Conference should reach a stalemate, they could meet at a smaller conference table. For Germany the main motive lay in the fact that she again became an active member in the totality of European policy in which she was participating as a partner with equal rights in an international agreement, which contrasted the discrimination against Germany in its contents as well as in its character.

As a matter of fact, this part was concluded at a time when a new international tension was already arising and increasing which again threatened to isolate Germany's position. This time it had its source not so much in the Disarmament Conference, the proceedings of which, after the customary fruitless endeavors for progress, were again suspended on 29 June 1933 until 16 October 1933, as in the contrasting position of Germany and Austria in the World Economic Conference which opened in London on 12 June 1933. The Austria Prime Minister Dollfuss made use of this conference to call the attention of th Powers to a purported threat to Austria's independence by Germany, in that he accused Germany of lending support to the Austrian Nati nal Socialists in their

H0186-0106

fight against his (Dollfuss') Government. Making the Austrian question the center of gravity for European policy and calling on the Powers for protection against alleged threat to Austria's independence by Germany -- which the former considered an important stone in the construction of European power relations -- he aggravated their mood anew, which had been quieted down only a short time before with some trouble. What the mood was then in the summer of 1933 is shown in my document book I, under Nos. 11 and 12, reports of the defendant to Reich President von Hindenburg and Hitler, dated 19 June 1933; but reference is also made to the speech by the defendant on 15 September 1933 - document book II No. 56 -- before representatives of the foreign press, which also comments on the consequences of such a mood for the prospects of the proposed negotiations to be resumed by the Disarmament Conference on 16 October 1933, and which is reflected in his words: "Judging by certain indications, the readiness of highly armed States to carry out disarmament obligations for which they pledged themselves seems to be smaller today than ever. Finally, there is only one alternative: Realization of the right to equality or else a collapse of the entire idea of disarmament, with incalculable consequences, for which responsibility would not rest on Germany".

This scepticism of the defendant as regards the political situation in general, and prospects of the Disarmament Conference in particular, were only too well founded. For the new so-called Simon Plan -- submitted even before the Conference started by Sir John Simon, head of the English Delegation, as a basis for negotiations -- and to a no less degree the statement relative thereto, made by Sir John, made it clear beyond doubt that the attitude of the Western powers still continued to be the same as in the spring of 1933 and that they were even still less disposed to justify Germany's demand for an equality of rights. For Sir John declared in plain language that in view of the present non-clarified conditions in Europe, and considering the seriously shaken confidence in peace, a disarmament conference, even after the pattern of the MacDonald Plan which Germany in the spring had declared unacceptable, was an impossibility. This not only meant bringing an unjustified accusation against Germany -- which had done no more but stand on the rights accorded it by treaty -- but it also was a clear denial of any kind of realization of

H0186-0107

Germany's equality of rights and of disarmament. As a matter of fact, this Simon Plan falls even farther short than previous plans in doing justice to Germany's rightful demand for equality of right and disarmament, that is, a voting of all states among each other, including Germany.

Time being too short, I once more have to refrain here from going into detail and must confine myself to pointing out that it meant an increased restriction and reduction of German armament in favor of the other nations. For it provided that during the first half of the 8 years duration of the proposed disarmament -- Germany alone -- through the conversion of its Reichswehr into an army with a brief period of service -- would as a practical matter be still further disarmed, subjecting herself, in addition, to an armament control by the Powers, while the highly-armed powers were not schedul to begin disarming until the fifth year, and then only in terms of manpower reserve, not in terms of arms. These provisions demonstrated more clearly than ever that not only did the Western Powers not intend to disarm, but that they wanted to weaken Germany still more and make her tractable to their power interests. There was no more mention made of the fact that the Five-Power-Agreement of 11 December 1932 had agreed to recognize Germany's equality of rights.

It really should have been clear to the Western Powers as well that such a plan depriving her of a chance to participate in further negotiations at the Conference was bound to be unacceptable to Germany from the outset. However, on the strength of the lessons which German foreign policy learned in the spring of 1933-- when Germany came very near having the Western powers threaten her with war because she was unwilling to renounce her just demands -- nothing was left to her this time but to answer the new threat which this plan undoubtedly involved, not only by rejecting the plan but also be withdrawing from the Disarmament Conference as well as the League of Nations. Further negotiations during the conference under such conditions were deemed and could only result in a still greater heightening of contrasts.

It is difficult to understand why the Western Powers failed to foresee Germany's attitude and took her withdrawal from the League of Nations and the Disarmament Conference as a surprise. In Hitler's speech, an appeal for peac

H0186-0108

delivered on 17 May 1933 and already cited here, he expressed in unequivocal terms that notwithstanding the sincere will for peace and honest willingness towards still further disarmament -- provided it were mutual -- entertained by the German Government and the German people they would never consent to further himiliation and to renunciation of her claim for equality of rights but that, if such was the demand, they rather assume the consequences without hesitation. Still more incomprehensible is the fact that in all earnestness the Prosecution places the blame for this withdrawal by Germany on the defendant von Neurath, as head of Foreign Policy, and that it believes it can find evidence of deliberate action by the fact that the Prosecution preserves a complete silence on the reasons and happenings which led up to this withdrawal, and thereby tries to create the impression that Germany's withdrawal occurred entirely without cause. The extent to which the Prosecution's attempt to interpret the withdrawal as an action in preparation for war is contrary to objective

H0186-0109

history becomes clearly apparent from the fact -- which the Prosecution also passed over in silence -- that concurrent with its declaration of withdrawal the German Government, through Hitler's speech of 14 October 1933 as well as also through the speech of the defendant von Neurath of 18 October 1933 (document book II, Nos. 58a and 59) not only declared with all possible emphasis its unchanging desire for peace and readiness to negotiate in the case of any disarmament plan which would consider Germany's equality of rights, but also tried to carry into practice this willingness to negotiate by submitting on her part practical proposals for general disarmament, as set forth in the memorandum prepared by my client and submitted to the Powers on 18 December 1933 (document book II, No.61).

The interview granted by the defendant to the representative of the New York Times in Berlin (interview document book II, No.62) is an expression of the same wish. A government or a foreign minister who intends to prepare, or even plan, an aggressive war is hardly likely to make proposals for limiting, or even still further reducing, the armament of countries, including his own.

Diplomatic negotiations between Germany and the individual Western Powers which followed the memorandum of 18 December 1933 ended, as I may presume to be well known, with the Note of the French Government to the English Government of 17 April 1934 -- (document book III, No.70), which closes the door to further negotiations as proposed in an English memorandum of 29 January 1934 as well as another memorandum of the German Government of 13 March 1934, as this was fully stated in the speech of the defendant von Neurath on 27 April 1934 -- Document Book III No.70.

The fact which appeared in the preceding discussions is interesting and must be emphasized here, that in the course of the same an indisputable change was shown in relations between France and Russia, the further development of which became more or less authoritative, not only for the German foreign policy, but also for the entire European policy in the coming years. The Russian representative in his speech to the Office of the Disarmament Conference on 10 April 1934 took the stand, contrary to the point of view always previously represented by Russia, that the task of the Disarmament Conference is to decide on a most wide-reaching reduction of armaments, as through this security will be best provided for, and the non-successof their disarmament efforts,

H0186-0110

but did not, however, draw the conclusion therefrom that the Conference had failed, but on the contrary defined the creation of new security instruments of International Law as the sole task of the Disarmament Conference, a point of view which was underlined further by the Russian Foreign Minister Litvinov on 29 April 1934. With this thesis Russia had made the point of view of France her own: First security, then disarmament; but beyond that the door is opened to the increased disarmament exertions of all the nations. It becomes evident immediately of what far-reaching importance this fact was, if I refer to the French-Russian Assistance Pact which was signed one year later which induced the re-establishment of German armed sovereignty occasioned by this and by the increase in armament of all the remaining States. A direct route leads from this declaration of the Russian Foreign Minister via the expletive negotiations in the summer of 1934 regarding the project of the so-called Eastern Pact to the Franco-Russian Assistance Pact of 2 May 1935 and the Russia-Czech-Slovak Assistance Pact of 16 May 1935.

The French Note of 17 April 1934 with its categorical "No", signified the closure of an epoch and the beginning of a new one in international policy. France finally gave to understand that she was no longer willing to carry on with a general agreement between all States aiming at a solution of the questions of disarmament and security, but decided to go her own way from now on. The reason for this lay, obviously, in the fact that she recognized or thought she had recognized that the most important of the participating Powers, England and Italy, were not prepared to follow her unconditionally any more, and to continue to refuse Germany the equality of rights theoretically granted her on 11 December 1932. This was expressed through the far reaching approximation of the English and Italian points of view in the English Memorandum of 29 January 1934 and in the declaration of Mussolini to the English Minister Eden on 26 February 1934, which dealt with the clearly outlined German point of view in the Memoranda of 13 March and 16 April 1934.

A similar tendency was shown in the Memorandum of the so-called Neutral Powers, namely Denmark, Spain, Norway, Sweden and Switzerland

of 14 April 1934, but also, above all, the speech of the Belgian Minister President Count Broqueville of 6 March 1934 (Document Book III No. 66) showed the same tendence.

With this note of 17 April 1934, to which the defendant von Neurath referred in his speech of 27 April 1934 - Document Book III No. 74 -- before the German Press explained his attitude thoroughly and convincingly. France, as was soon apparent, finally abandoned the basis and the principles of the Versailles Treaty, the preamble to part V of which has fixed in an unmistakable manner the general disarmament of all States of the League of Nations as the basis and the counter-obligation for the disarmament of Germany. The new French policy set up immediately after the note of 17 April 1934 let it soon be known that it had decided to do exactly the opposite of the basic idea of the Versaille Treaty regarding German disarmament.

The French Foreign Minister Lonis Barthon began on 20 April 1934 his journey eastwards, which took him to Warsaw and Prague and first of all, as it soon transpired, tried to prepare the ground for the resumption of diplomatic relations between the States of the so-called Little Entente with Russia, which so far did not exist, and thus prepare the way for the inclusion of the greatest military power of Europe in European politics on the side of France. This succeeded. Czecho-Slovakia and Rumania, the most important States of the Little Entente, recognized the Russian government on 9 June 1934 and renewed diplomatic relations with it.

In this way France had made the first breach in the ideologiccal and psychological aversion of the European States against the Soviet Russia of that time, and the French Minister for Foreign Affairs could now on his second journey to the East, not only win the consent of all States of the Little Entente to the so-called Eastern Pact which had long ago been negotiated with Russia, but could subsequently place it openly on the agenda of international policy in London in the beginning of July. With this -- as the Czechoslovak Minister for Foreign Affairs Benesch justly stated in his of 2 July 1934 -- Document Book III No. 81 -- a regrouping of the European Powers which appeared capable of everthrowing to a certain extent all former relations on the Continent was announced in advance.

H0186-0111

England, which already on 18 May 1934 had stated through the mouth of Stanley Baldwin, who at that time was Lord President of the Council, before the House of Commons, that in view of the question a system of so-called collective peace, which if necessity would have to contain the need for sanctions, she stood before one of the most difficult decisions in her history, - he coined the phrase: Sanctions are war - gave his agreement in the beginning off July 1934 on the occasion of the visit of Barthou to London, not only to the Eastern Pact but in addition also to the entry of the Soviet-Union into the League of Nations, which had been suggested by France. On 18 December 1934 the League of Nations officially resolved to accept Russia into the League. Thus France had for the most part already reached her goal, the inclusion of Russia, the strongest military power, into European politics, and indeed on her side as would shortly be shown.

In spite of this advised change of European Power conditions, German foreign policy under the direction of the defendant not only continued unaltered and consequently its peaceful struggle for the practical recognition of German equality, even after the French note of 17 April 1934 which it considered disastrous, but also its policy of peace. In his speech of 27 April 1934 already previously quoted, my client once more and unreservedly expressed the will of Germany, that she was also in future prepared for any sort of an understanding even at the price of further armament limitations by agreement, if this would correspond with her demand for equality. She did not, however, limit herself to this alone. In order to resume the international discussions and negotiations regarding the disarmament question, which had been interrupted by France's "No" of 17 April 1934, Hitler had a meeting in Venice with Mussolini in the middle of June 1934. The purpose and contents of this meeting were at that time summarized by Mussolini with the words: "We have met in order to try to disperse the clouds which are darkening the political horizon of Europe".

May I, then, for the sake of prudence, recall the fact that Italy at that time was still entirely on the side of the Western Powers. Several days later Hitler used the opportunity to emphasize again his and German's unshakable wish

H0186-0112

for peace in his speech at the District Day ("Gautag") at Gera on 17 June 1934, - Document Book III No. 80 -- when he stated literally amongst other things: "If anyone tells us, if you National-Socialists wish equality for Germany, then we must increase our armaments. "Then we can only say, as far as we are concerned, you can do so, because after all we have no intention of attacking you. We just wish to be so strong that the others will have no wish to attack us. The more the world speaks of the formation of blocks, the clearer it becomes to us that we must concern ourselves with the maintainance of our own power".

It was the same change of the power relationships which was constantly taking more clearly defined shape, and the realization of political tendencies, which were the bases of the English air armament program which was announced before the House of Commons on 19 July 1934 and which the French Minister President Doumergue expressed in his speech of 13 October 1934 at the coffin on the assassinated Minister Louis Barthou with the words: "The week nations are booty or a danger". No matter how irrefutably correct this idea really was, it received, as far as the attitude of the Western Powers toward Germany was concerned, as little consideration as all attempts of German foreign policy to carry on the negotiations regarding the disarmament question and as the repeated declarations of Germany about her preparedness for understanding. Germany was denied now, as Before, the recognition of her equality. This fact also made it impossible for German foreign policy, apart from the encirclement policy of France which became more discernible every day, to join the Eastern Pact. The reasons for this refutation of the Eastern Pact have been presented in detail in the communique of the German Government of 10 September 1934 -- Document Book III No. 85. They culminated in the diagnosis that Germany, in view of her indisputable military weakness and defeat, could not take on any treaty oblications towards the highly armed States which might involve her in all possible conflicts in the East, and could make her a probably war theater.

It was not the lack of preparedness to participate in international treaties or even a lack of a will for peace, which caused Germany to maintain this attitude, but first and foremost her notorious military weakness. In addition

H0186-0113

to this came the true character of France's policy which showed itself more and more, and that of the Eastern Pact as an instrument of the French policy of encirclement directed against Germany. This character became clear to all the world when, in the session of the Army Committee of the French Cabinet on 23 November 1934, the reported Archimbaud described as an undeniable fact that a formal Entent existed between France and Russia, on the basis of which France would be prepared to furnish a considerable, well-equipped and well-trained army in the event of a conflict. (Document Book III No. 89). This fact, however, was clearly and openly proved through the declaration of the French Minister for Foreign Affairs Laval on 20 January 1935 before a representative of the Russian newspaper Istvestja, in connection with the Franco-Russian Record of 5 December 1934, (Document Book III No. 91) and the interpretations of Litvinov of 9 December 1934 given thereto. For those well-informed there could exist no further doubt of the existence of a close French-Russian alliance, even if the ratification of its final text only took place on 2 May 1935, and was then immediately followed by the ratification of the Russo-Czechoslovak Non-Aggression Pact of 16 May 1935.

It was, of needs, forced upon the mind of every clear-thinking person that such a perfect system of French alliances bore a desperate likeness to the one which had opposed Germany once already, in the year 1914. This involuntary parallel was bound to make every German statesman draw the conclusion that these alliances could only be directed against Germany and constituted accordingly, in every case, a menace to her. And this, so much the more as these alliances, this obvious encirclement of Germany were by no means the only alarming events. Coupled with it, a vast increase in military armaments of nearly all non-German countries had been carried out in the course of the last few months. Not only had England begun to carry out her large-scale armament program, as shown by the British White Book of March 1, 1935, the submitting of which does not seem necessary, since it is an official document, but in France too the efforts to reinforce her army had begun. Under the guidance of her, at that time most popular general Marshal Pétain, while in Russia an increase in the peacetime figure of her army from 600,000 to

H0186-0114

940,000 men had taken place, under joyful acquiescence on the side of France. Czecho-Slovakia had introduced, in December 1934, a two years compulsory service (Document Book III N°. 92) and Italy also was continually increasing her armaments.

After the bitter experiments of the latter years, all this was bound to be felt from the point of view of German politics -- as I have shown you, my Lords -- as nothing but a vast menace, and interpreted accordingly, a menace which left Germany all but defenceless.

A foreign policy, conscious of its responsibility, had to reckon at each moment with the danger that such a concentrated and continually increasing power of France and her allies could fall upon Germany and crush her. For nothing is more dangerous than a concentration of power in one hand. It is bound, according to old experience, to lead some day to an explosion, if not counter-balanced by some other power, and this explosion is then directed towards the country nearest-at-hand considered as an enemy. This latter was and could be only Germany, as only this country was considered by France as a foe, and no other country in the world besides her.

And now I beg leave to ask you, my Lords, whether it was not an obvious command of self-defence, an obvious demand of the most primitive instinct for self-preservation of any living being -- and the nations too are living entities, they too possess such an instinct for self-preservation -- that now the German government and the German people took back the military sovereignty which had constantly been denied it, and tried to take measures of security against the menace pending upon Germany by organizing a military aviation and by establishing a peacetime army of only 36 divisions on the basis of compulsory military service. I refer to the proclamation of the German Reich Government concerning the restoration of German compulsory service of March 16th, 1935. (Document Book II nr 97)

THE PRESIDENT: The Tribunal will adjourn.

(The Tribunal adjourned until 1000 hours, 24 July 1946.)

H0186-0115